

# **INDIAN CLAIMS COMMISSION**

---

## **ESKETEMC FIRST NATION WRIGHT'S MEADOW PRE-EMPTION INQUIRY**

---

### **PANEL**

**Commissioner Daniel J. Bellegarde (Chair)**  
**Commissioner Jane Dickson-Gilmore**  
**Commissioner Alan C. Holman**

---

### **COUNSEL**

For the Esketemc First Nation  
Stan H. Ashcroft

For the Government of Canada  
Douglas Faulkner

To the Indian Claims Commission  
John B. Edmond / Diana Kwan

---

**June 2008**



## CONTENTS

<b>SUMMARY</b>		v
<b>PART I</b>	<b><u>INTRODUCTION</u></b>	1
	MANDATE OF THE COMMISSION	2
<b>PART II</b>	<b><u>THE FACTS</u></b>	5
<b>PART III</b>	<b><u>ISSUES</u></b>	9
<b>PART IV</b>	<b><u>ANALYSIS</u></b>	11
	ISSUE 1: THE ESKETEMC FIRST NATION’S INTEREST IN WRIGHT’S MEADOW	11
	Background	11
	Esketemc First Nation’s Position	14
	Canada’s Position	14
	Findings Re Indian Interest	15
	Use of Land and the Indian Interest	16
	Indian Settlement and the Indian Interest	18
	ISSUES 2 AND 3: FIDUCIARY DUTY	23
	Background	23
	Esketemc First Nation’s Position	28
	Canada’s Position	29
	Panel’s Reasons	30
	Reasons of Commissioners Bellegarde and Holman	30
	The Fiduciary Relationship	30
	The 1893 Pre-emption	34
	Reasons of Commissioner Dickson-Gilmore	39
	Was there a Breach of Lawful Obligations?	39
	ISSUE 4: FURTHER BREACHES OF THE SPECIFIC CLAIMS POLICY	50
<b>PART V</b>	<b><u>CONCLUSIONS AND RECOMMENDATIONS</u></b>	51
	<b>APPENDICES</b>	53
A	Historical Background	53
B	Esketemc First Nation: Wright’s Meadow Pre-emption Inquiry – Chronology	95



## SUMMARY

### ESKETEMC FIRST NATION WRIGHT'S MEADOW PRE-EMPTION INQUIRY British Columbia

The report may be cited as Indian Claims Commission, *Esketemc First Nation: Wright's Meadow Pre-Emption Inquiry* (Ottawa, June 2008).

*This summary is intended for research purposes only.  
For a complete account of the inquiry, the reader should refer to the published report.*

**Panel:** Commissioner D. Bellegarde (Chair), Commissioner J. Dickson-Gilmore,  
Commissioner A.C. Holman

**British Columbia** – Indian Settlement – Pre-emptions – Reserve Creation – Joint Indian Reserve Commission – Village Sites; **Culture and Religion** – Pithouses – Seasonal Round; **Fiduciary Duty** – Pre-Reserve Creation; **Reserve** – Reserve Creation

#### THE SPECIFIC CLAIM

On February 14, 1995, the Esketemc First Nation submitted its claim to the Specific Claims Branch of the Department of Indian Affairs and Northern Development (DIAND), and, on January 10, 2000, the claim was rejected. On August 23, 2004, the First Nation requested that the Indian Claims Commission (ICC) review its rejected specific claim. At issue in this inquiry is the pre-emption of a meadow used by the First Nation.

#### BACKGROUND

The Esketemc First Nation, descendants of the Secwepemc or Shuswap people, make their home on Alkali Lake Creek, a tributary of the Fraser River, in central British Columbia.

In 1861, 40 acres of land were set apart for use of the Esketemc First Nation within the area now known as Indian Reserve (IR) 1. Although the salmon fishery was once the main economy, the Esketemc First Nation had considerable success raising horses and cattle. In July 1881, additional lands were set aside for the Esketemc by Indian Reserve Commissioner Peter O'Reilly. O'Reilly stated that he had difficulty finding suitable agricultural land because settlers had occupied the best locations; nevertheless, IR 1 was expanded by 550 acres, and six additional reserves were set aside with two fishing stations. These reserves were surveyed by W.S. Jemmett in 1883 and approved by the Chief Commissioner of Lands and Works in 1884.

By the early 1890s, almost every family was farming. With growing farms and increased livestock, the Band was faced with a critical need for haylands. To meet this need, in approximately 1891 or 1892 the Band drained a lake that had been formed by a beaver dam. Draining the lake created a meadow with abundant haylands. This meadow, which is the subject of this inquiry, was pre-empted in July 1893 by William Wright. Once the pre-emption was registered, Chief August wrote to the Indian Superintendent protesting the pre-emption and requesting assistance. The dispute over possession of the meadow led to an investigation conducted by three Indian Agents over the course of two years. The investigations revealed the Band's efforts in creating the meadow, and its seasonal use.

Provincial officials became involved in 1893. The province suggested to O'Reilly that, if Wright's pre-emption was falsely obtained, then the pre-emption record would not be granted. In February 1894, O'Reilly stated that he did not set aside the particular meadow pre-empted by Wright, and that he had not been asked to have the meadow set aside. However, O'Reilly indicated that he would attempt to set aside for the Esketemc Band other meadows used for hay and not subject to pre-emption.

Indian Superintendent Vowell visited the area in July 1894. In his report, he stated that the other haylands used by the Band should be set aside for it and that it could not claim lands that were not set aside for it. Later, a letter from O'Reilly dismissed the Band's claim to the meadow. The province then concluded that the Band should receive the value of its improvements to the land as it could not acquire the land.

In 1895, O'Reilly set aside an additional seven reserves for the Esketemc Band, which included additional meadow lands. One of the new reserves set aside was known as "Sampson's Meadow," located immediately west of Wright's Meadow.

On May 23, 1899, Wright received a certificate of improvement for lot 323. A month later, Wright received Crown grant no. 1145/103 for Wright's Meadow. As required by the *Land Act, 1884*, Wright declared that he made "improvements amounting in the aggregate of two dollars and fifty cents an acre on such Pre-emption claim."

In 1953, a dam on Place Lake was constructed to hold water for the Alkali Lake Ranch. The dam flooded Wright's Meadow and, as a result, it no longer exists.

### ISSUES

Did the Alkali Lake Band, as it was then known, have an interest in the lands that William H. Wright pre-empted in 1893? If the Band had an interest in the lands, did the federal Crown have a duty to protect that interest? If the federal Crown had a duty to protect the Band's interest, did it discharge that duty? In all the circumstances, did the federal Crown breach any lawful obligation to the Band, as specified in the Specific Claims Policy?

### FINDINGS

The panel concludes that the Alkali Lake Band, as it was then known, had an interest in the meadow that Wright pre-empted in 1893. In reaching this conclusion, the panel acknowledges that this interest can be based on a cognizable interest of demonstrated use, which constitutes Indian settlement lands. The opinion of the panel diverges on the issue of finding a breach of fiduciary duty. The panel agrees in finding that a fiduciary duty exists in relation to the meadow, but disagrees on whether that duty has been breached. The majority of the panel find that the Crown has breached its fiduciary duty to the Band. The minority does not agree with this finding and expresses this dissent in a minority report. As the focus of the analysis has been on the fiduciary duty and the majority found a breach of fiduciary duty, it is not necessary for the fourth issue to be addressed.

### RECOMMENDATIONS

Commissioners Bellegarde and Holman recommend that the claim of the Esketemc First Nation for the lands comprising Wright's Meadow be accepted for negotiation under Canada's Specific Claims Policy. Commissioner Dickson-Gilmore recommends that the claim of the Esketemc First Nation for the lands comprising Wright's Meadow not be accepted for negotiation under Canada's Specific Claims Policy.

### REFERENCES

In addition to the various sources noted below, ICC inquiries depend on a base of oral and documentary research, often including maps, plans, and photographs, that is fully referenced in the report.

### Cases Referred To

*Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245; *Guerin v. The Queen*, [1984] 2 SCR 335; *Lac Minerals v. International Corona Resources Ltd.*, [1989] 2 SCR 574; *Frame v. Smith*, [1987] 2 SCR 99; *Hodgkinson v. Simms*, [1994] 3 SCR 377; *Quebec (A.G.) v. Canada (National Energy Board)*, [1994] 1 SCR 159; *M. (K) v. M. (H)* (1992) 96 DLR (4th) 289 (SCC); *Blueberry River Indian Band v. Canada* (1995), 130

DLR (4th) 193 (SCC); *Osoyoos Indian Band v. Oliver (Town)*, [2001] 3 SCR 746; *R. v. Sparrow*, [1990] 1 SCR 1075.

**ICC Reports Referred To**

*Mamaleleqala Qwe'Qwa'Sot'Enox Band: McKenna-McBride Applications Inquiry* (Ottawa, March 1997), reported (1998) 7 ICCP 199; *Williams Lake Indian Band: Village Site Inquiry* (Ottawa, March 2006); *Esketemc First Nation: Indian Reserves 15, 17, and 18 Inquiry* (Ottawa, November 2001), reported (2002) 15 ICCP 51.

**Treaties and Statutes Referred To**

*Land Act*, RSBC 1884.

**Other Sources Referred To**

DIAND, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), reprinted (1994) 1 ICCP 171.

**COUNSEL, PARTIES, INTERVENORS**

S. Ashcroft for the Esketemc First Nation; D. Faulkner for Canada; J.B. Edmond, D. Kwan to the Indian Claims Commission.





**PART I**  
**INTRODUCTION**

The Esketemc First Nation, descendants of the Secwepemc or Shuswap people, make their home on Alkali Lake Creek, a tributary of the Fraser River, in central British Columbia.

In 1861, 40 acres of land were set apart for use of the Esketemc First Nation within the area now known as Indian Reserve (IR) 1. Although the salmon fishery was once the main economy, the Esketemc First Nation had considerable success raising horses and cattle. In July 1881, additional lands were set aside for the Esketemc by Indian Reserve Commissioner Peter O'Reilly. O'Reilly stated that he had difficulty finding suitable agricultural land because settlers had occupied the best locations; nevertheless, IR 1 was expanded by 550 acres, and six additional reserves were set aside with two fishing stations. These reserves were surveyed by W.S. Jemmett in 1883, and approved by the Chief Commissioner of Lands and Works in 1884.

By the early 1890s, almost every family was farming. With growing farms and increased livestock, the Band was faced with a critical need for haylands. To meet this need, in approximately 1891 or 1892 the Band drained a lake that had been created by a beaver dam. Draining the lake created a meadow with abundant haylands. This meadow, which is the subject of this inquiry, was pre-empted in July 1893 by William Wright. Once the pre-emption was registered, the Band's Chief August wrote to the Indian Superintendent protesting the pre-emption and requesting assistance. The dispute over possession of the meadow led to an investigation conducted by three Indian Agents over the course of two years. The investigations revealed the Band's efforts in creating the meadow, and its seasonal use.

Provincial officials became involved in 1893. The province suggested to O'Reilly that, if Wright's pre-emption was falsely obtained, then the pre-emption record would not be issued. In February 1894, O'Reilly stated that he did not set aside the particular meadow pre-empted by Wright, as the First Nation had not expressed any interest in his doing so. However, O'Reilly indicated that he would attempt to set aside other meadows used for hay and subject to pre-emption for the Esketemc Band.

Indian Superintendent Vowell visited the area in July 1894. In his report, Vowell described the disputed haylands and noted that the other haylands used by the Band should be set aside for it

as it could not claim lands that were not set aside for it. Later, a letter from O'Reilly dismissed the Band's claim to the meadow. The province then concluded that the Band should receive the value of its improvements to the land as it could not acquire the land.<sup>1</sup>

In 1895, O'Reilly set aside an additional seven reserves for the Esketemc Band, which included additional meadow lands. One of the new reserves set aside was known as "Sampson's Meadow," located immediately west of Wright's Meadow.

On May 23, 1899, Wright received a certificate of improvement for lot 323. A month later, Wright received Crown grant no. 1145/103 for Wright's Meadow. As required by the *Land Act, 1884*, Wright declared that he made "improvements amounting in the aggregate of two dollars and fifty cents an acre on such Pre-emption claim."

In 1953, a dam on Place Lake was constructed to hold water for the Alkali Lake Ranch. The dam flooded Wright's Meadow and, as a result, it no longer exists.

On February 14, 1995, the Esketemc First Nation submitted its claim to the Specific Claims Branch of the Department of Indian Affairs and Northern Development (DIAND); the claim was rejected on January 10, 2000. On August 23, 2004, the First Nation requested that the Indian Claims Commission (ICC) review its rejected specific claim.

## MANDATE OF THE COMMISSION

The mandate of the Indian Claims Commission is set out in federal Orders in Council providing the Commissioners with the authority to conduct public inquiries into specific claims and to issue reports on "whether a claimant has a valid claim for negotiation under the [Specific Claims] Policy where the claim was already rejected by the Minister."<sup>2</sup> This Policy, outlined in DIAND's 1982 booklet entitled *Outstanding Business: A Native Claims Policy – Specific Claims*, states that Canada will

---

<sup>1</sup> Chief Commissioner of Lands and Works, Victoria, to F. Soues, Government Agent, September 4, 1894, no file reference available (ICC Exhibit 1a, p. 42).

<sup>2</sup> Commission issued September 1, 1992, pursuant to Order in Council PC 1992-1730, July 27, 1992, amending the Commission issued to Chief Commissioner Harry S. LaForme on August 12, 1991, pursuant to Order in Council PC 1991-1329, July 15, 1991.

accept claims for negotiation where they disclose an outstanding “lawful obligation” on the part of the federal government.<sup>3</sup> The term “lawful obligation” is defined in *Outstanding Business* as follows:

The government’s policy on specific claims is that it will recognize claims by Indian bands which disclose an outstanding “lawful obligation,” i.e., an obligation derived from the law on the part of the federal government.

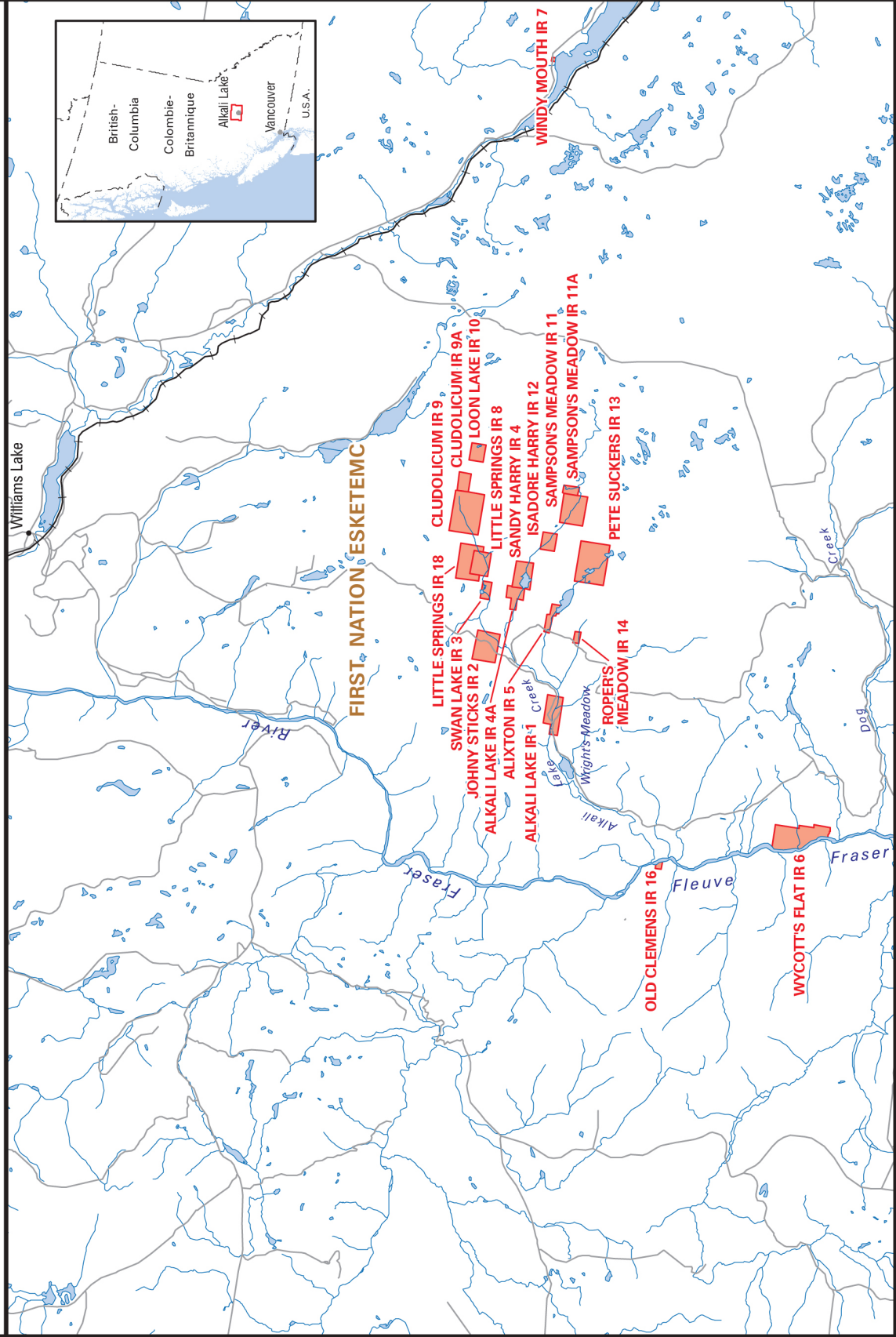
A lawful obligation may arise in any of the following circumstances:

- i) The non-fulfillment of a treaty or agreement between Indians and the Crown.
- ii) A breach of an obligation arising out of the *Indian Act* or other statutes pertaining to Indians and the regulations thereunder.
- iii) A breach of an obligation arising out of government administration of Indian funds or other assets.
- iv) An illegal disposition of Indian land.<sup>4</sup>

---

<sup>3</sup> Department of Indian Affairs and Northern Development (DIAND), *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994) 1 ICCP 171–85 (hereafter *Outstanding Business*).

<sup>4</sup> *Outstanding Business*, 20, reprinted (1994) 1 ICCP 179.



## **PART II**

### **THE FACTS**

The Esketemc First Nation, originally known as the Alkali Lake Band, are descendants of the Secwepemc or Shuswap people, and make their home on Alkali Lake Creek, a tributary of the Fraser River, in central British Columbia. The traditional Secwepemc way of life was based on a seasonal round that revolved around hunting, gathering, and salmon fishing. People would move or camp in regular cycles depending on what resources were available in the area and each winter they would return to their winter villages.

In 1849, the colony of Vancouver Island was established by Britain, the Hudson's Bay Company (HBC) was granted proprietary rights to the colony for 10 years, and, in 1851, James Douglas, HBC Chief Factor, was appointed Governor. Following the Fraser gold rush, Douglas was also appointed the Governor of the new mainland colony of British Columbia in 1858. One of Governor Douglas's initial instructions was to reserve Indian villages and lands. On January 4, 1860, Governor James Douglas issued *Proclamation No. 15*, a pre-emption policy which allowed for the acquisition of unoccupied, unreserved, and unsurveyed Crown land in British Columbia. Sites constituting an Indian reserve or settlement were prohibited from occupation and acquisition. The pre-emption policy eventually evolved into provincial legislation in the form of the *Land Act, 1884*, which allowed grants of 320 acres of land per pre-emption. The legislation also contained provisions prohibiting the pre-emption of Indian reserves and settlements.

In 1861, 40 acres of land were set apart for use of the Esketemc First Nation within the area now comprising IR 1. At this time, while the salmon fishery remained the main economy, the Esketemc First Nation began to have considerable success raising horses and cattle. In July 1881, Indian Reserve Commissioner Peter O'Reilly met with the Band to set aside additional lands for reserves. O'Reilly stated that he had difficulty finding suitable agricultural land because settlers had occupied the best locations. However, IR 1 was expanded by 550 acres, and six additional reserves were set aside with two fishing stations in consultation with the Band. These reserves were surveyed by W.S. Jemmett in 1883, and approved by the Chief Commissioner of Lands and Works in 1884.

By the early 1890s, with growing farms and increased livestock, the Band was faced with a critical need for haylands. To meet this need, in approximately 1891 or 1892 the Band drained a lake by destroying a beaver dam to create a meadow with abundant haylands. On July 8, 1893, William

Wright applied for and received a pre-emption record for lot 323 in the Lillooet District of Alkali Lake Creek of 320 acres. Wright's application included a declaration that the lot he was seeking to pre-empt was unoccupied and unreserved.

Once the pre-emption was registered, Chief August wrote to the Indian Superintendent protesting the pre-emption and requesting assistance. Concurrently, Wright reported being threatened by Chief August. The dispute over possession of the meadow led to an investigation conducted by three Indian Agents over the course of two years. The initial investigation was conducted by Indian Agent William Laing-Meason. He reported that, when O'Reilly laid out the reserve that became IR 1, not many families were actively farming. However, the situation had changed, and, by 1893, every family was farming. Laing-Meason advised that the land in dispute between Wright and the Esketemc Band was originally a lake, which the Band had drained to become a meadow. He described the First Nation's haying activities the year before on the land and reported that the First Nation claimed possession of the area Wright pre-empted.

In August 1893, Indian Agent Gomer Johns (successor to Meason) visited the meadow with Wright. Johns later reported that Wright offered to compensate the Band \$200 for work done or wanted \$250 to give up his pre-emption. The Esketemc Band was still in possession of the meadow at this time and still harvesting haylands. Provincial officials became involved in late 1893. A preliminary investigation by Government Agent F. Soues presumed that the First Nation was granted enough land when reserves were allocated and that if they had asked for the meadow at that time they would have gotten it. As a result, Soues stated there was no reason why Wright's pre-emption record could not be granted. However, the province received a letter from the Reverend Father Lejacq of the St Joseph's Mission at William's Lake on behalf of the Band, which advised that the First Nation had complained to O'Reilly about a lack of haylands when O'Reilly was setting aside reserve lands. Father Lejacq also advised that O'Reilly had told the Band to look for suitable lands to hay and that these lands would eventually be set aside for First Nation. Father Lejacq suggested that the government should grant the haylands as the shortest and cheapest way to settle the matter. As a result, Attorney General Davie requested that Soues delay the issuing of Wright's pre-emption and then wrote to O'Reilly. The province suggested to O'Reilly that, if Wright's pre-emption was falsely obtained, then the pre-emption record would be set aside.

In February 1894, O'Reilly stated that he did not set aside the particular meadow pre-empted by Wright, as he had not been requested to do so by the First Nation. However, O'Reilly indicated that he would attempt to set aside for the Esketemc Band other meadows used for hay and subject to pre-emption. He stated that Father Lejacq was incorrect, and that he had at no time encouraged the First Nation to occupy and improve land outside of the lands set aside as a reserve. O'Reilly also questioned why the First Nation had, at no time, requested the lands in the many times he had met with them and passed through their lands.

With the matter still unresolved, Indian Agent Bell (successor to Johns) requested Indian Superintendent Vowell to visit the meadow personally. Vowell visited the area in July 1894. In his report, he stated that the other haylands used by the Band should be set aside for it and that it could not claim lands that were not set aside for it. The Deputy Superintendent of Indian Affairs then wrote to Vowell and directed that, if Wright relinquished his claim, then Vowell should contact the provincial authorities to "secure the land to the Indians" and to reserve any other haylands that the band members were using.

Later, a letter from O'Reilly dismissed the Band's claim to the meadow. The province then concluded that the Band should receive the value of its improvements to the land as it could not acquire the land.

The province proceeded to assess and evaluate the improvements made to the meadow. In September 1894, Chief Commissioner of Lands and Works (CCLW) Vernon wrote to Soues and instructed him to visit the meadow to estimate the value of improvements made by the Band and by Wright. On October 16, 1894, Acting Government Agent Phair reported that the total value of the improvements was \$190.00. He also stated that the Indian people advised him that they dammed the lake in 1889. It was concluded that Wright had not made any improvements on the land, which, up until this time, he had not occupied as directed by the Crown, given the dispute over the meadow. Indian Agent Bell had accompanied Phair, and his report was identical to Phair's report.

On September 26, 1895, Indian Reserve Commissioner O'Reilly set aside an additional seven reserves for the Esketemc First Nation. O'Reilly then wrote to the Deputy Superintendent General of Indian Affairs advising that the reserve was increased to provide additional meadow lands. One

of the new reserves set aside was known as “Sampson’s Meadow” and was located immediately west of Wright’s Meadow.

On May 23, 1899, Wright received a certificate of improvement for lot 323. A month later, Wright received Crown grant no. 1145/103 for Wright’s Meadow. As required by the *Land Act, 1884*, Wright declared that he made “improvements amounting in the aggregate of two dollars and fifty cents an acre on such Pre-emption claim.”

In 1953, a dam on Place Lake was constructed to hold water for the Alkali Lake Ranch. The dam flooded Wright’s Meadow and, as a result, it no longer exists.



## **PART III**

### **ISSUES**

The Indian Claims Commission is inquiring into the following four issues as agreed to by the parties:

- 1 Did the Alkali Lake Band, as it was then known, have an interest in the lands that William H. Wright pre-empted in 1893?
- 2 If the Band had an interest in the lands, did the federal Crown have a duty to protect that interest?
- 3 If the federal Crown had a duty to protect the Band's interest, did it discharge that duty?
- 4 In all the circumstances, did the federal Crown breach any lawful obligation to the Band, as specified in the Specific Claims Policy?



**PART IV**  
**ANALYSIS**

**ISSUE 1: THE ESKETEMC FIRST NATION’S INTEREST IN WRIGHT’S MEADOW**

**1 Did the Alkali Lake Band, as it was then known, have an interest in the lands that William H. Wright pre-empted in 1893?**

In this issue, the panel is being asked to make a finding as to whether the predecessor of the Esketemc First Nation (the Alkali Lake Band) held an interest in the lands pre-empted by William H. Wright in 1893. The First Nation asserts that the Esketemc people held a specific interest in the meadow for a significant period prior to and immediately preceding the arrival of Wright. Canada argues that the First Nation’s use of Wright’s Meadow was not sufficient to create a cognizable Indian interest in the land.

Based on the oral history and the documentary evidence, the panel finds that the Alkali Lake Band, now known as the Esketemc First Nation, had an interest in the lands pre-empted in 1893 by William H. Wright.

**Background**

The members of the Esketemc First Nation are descendants of the Secwepemc ~~people~~ (otherwise known as the Shuswap); they are currently situated on Alkali Lake Creek, a tributary of the Fraser River, in central British Columbia.<sup>5</sup>

The Esketemc First Nation traditionally used and occupied an area known as “Tselute” meaning “cattail” in the Secwepemc language.<sup>6</sup> During the community session, the Elders indicated that Tselute is a large area that encompasses what is known as Wright’s Meadow.<sup>7</sup> It should be noted that Wright’s Meadow no longer exists. The construction of a dam on nearby Place Lake has flooded it.

---

<sup>5</sup> Beth Bedard, untitled report prepared for the Esketemc First Nation, c. March 2006 (ICC Exhibit 5k, p. 1).

<sup>6</sup> ICC Transcript, April 5, 2006 (ICC Exhibit 5a, p. 23, J. Roper; p. 129, A. Wycott).

<sup>7</sup> Map of Esketemc First Nation Reserves with legend, prepared by V.L. Robbins, June 25, 2005, produced at community session, April 5 and 6, 2006, held at the Esketemc First Nation, Alkali Lake, BC, with markings made at community session held April 5, 2006 (ICC Exhibit 5c, p. 1).

According to the report prepared by the First Nation's expert Beth Bedard, the remains of pithouses<sup>8</sup> found near the location of Wright's Meadow are the earliest evidence of the Esketemc people's use and occupation of the meadow.<sup>9</sup> Elder Morris Chelsea stated during the community session that he had viewed the remains of a pithouse located "on the northern side" and "towards the middle of the north side"<sup>10</sup> of Place Lake.

The Secwepemc people followed a traditional subsistence pattern which consisted of seasonal mobility in the search for food.<sup>11</sup> During the community session, several Elders testified that Wright's Meadow was used by the Esketemc people for a variety of purposes. Elder Dorothy Johnson stated that community members would stay near the meadow in winter to fish, trap, and hunt.<sup>12</sup> Elder Augustine Wycotte confirmed that the Esketemc people used the area known as Tselute for gathering medicines, fishing, hunting, trapping, and conducting traditional ceremonies.<sup>13</sup> Mr Wycotte also stated that his father once had a cabin at Tselute.<sup>14</sup> Several Elders also testified during the community session to the existence of stackyards, barns, and fencing near the area of Wright's Meadow.<sup>15</sup>

On January 4, 1860, Governor James Douglas issued *Proclamation No. 15*, which allowed for the acquisition of unoccupied, unreserved, and unsurveyed Crown land in British Columbia.

---

<sup>8</sup> A pithouse is a semi-subterranean winter dwelling that was used by the Shuswap people prehistorically. They are also referred to as "Keekwillies" or "Quigley" huts. See Beth Bedard, untitled report prepared for the Esketemc First Nation, c. March 2006 (ICC Exhibit 5k, p. 1).

<sup>9</sup> Beth Bedard, untitled report prepared for the Esketemc First Nation, c. March 2006 (ICC Exhibit 5k, p. 1).

<sup>10</sup> ICC Transcript, April 5, 2006 (ICC Exhibit 5a, p. 97, M. Chelsea).

<sup>11</sup> Beth Bedard, untitled report prepared for the Esketemc First Nation, c. March 2006 (ICC Exhibit 5k, p. 1).

<sup>12</sup> ICC Transcript, April 6, 2006 (ICC Exhibit 5a, p. 159, D. Johnson).

<sup>13</sup> ICC Transcript, April 5, 2006 (ICC Exhibit 5a, p. 125, A. Wycotte).

<sup>14</sup> ICC Transcript, April 5, 2006 (ICC Exhibit 5a, p. 125, A. Wycotte).

<sup>15</sup> ICC Transcript, April 5, 2006 (ICC Exhibit 5a, p. 98, M. Chelsea).

Governor Douglas's *Proclamation* prohibited settlers from pre-empting an "Indian Settlement."<sup>16</sup> After 1860, colonial land policies in the province of British Columbia were established and revised through a series of pre-Confederation land ordinances. However, the prohibition on pre-empting Indian settlements continued after British Columbia joined Confederation in 1871.<sup>17</sup>

In 1861, the Alkali Lake Band was allotted a 40-acre reserve located in the area now referred to as IR 1. In July 1881, Indian Reserve Commissioner Peter O'Reilly expanded the size of the original reserve and allotted the First Nation six additional reserves and two fishing stations in consultation with the Band, who had accompanied O'Reilly and selected the areas.<sup>18</sup> Commissioner O'Reilly's 1881 reserve allotments were made prior to the creation of Wright's Meadow. The meadow was therefore not included in any of the 1881 reserve allotments nor is there any evidence that the Esketemc people requested that the lake or lands adjacent to the meadow area be reserved at that time.

According to the documentary record, in approximately 1892, the Esketemc people began damming and flooding Place Lake.<sup>19</sup> These actions created a meadow which the First Nation called "U.S. Meadow" but was referred to as Wright's Meadow following the pre-emption.<sup>20</sup> Elder Irvine Johnson provided evidence that the hay produced from Wright's Meadow was very important to the community as many families at the time owned large numbers of horses and cattle.<sup>21</sup>

---

<sup>16</sup> Anne Seymour, "Pre-emption Policies, Indian Settlements & Reserve Establishment in British Columbia, 1860–1898," prepared for Specific Claims Branch, Indian and Northern Affairs Canada, November 17, 2005, p. 1 (ICC Exhibit 3b, p. 4).

<sup>17</sup> Anne Seymour, "Pre-emption Policies, Indian Settlements & Reserve Establishment in British Columbia, 1860–1898," prepared for Specific Claims Branch, Indian and Northern Affairs Canada, November 17, 2005, pp. 20–21 (ICC Exhibit 3b, pp. 23–24).

<sup>18</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, pp. 143–66 (ICC Exhibit 1c, p. 12).

<sup>19</sup> Gomer Johns, Indian Agent, Williams Lake Indian Agency, 150 Mile House, BC, to A.W. Vowell, Indian Superintendent, Victoria, BC, November 17, 1893, Library and Archives Canada (LAC), RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 16–20). See also ICC Transcript, July 5, 2006 (ICC Exhibit 5a, p. 28, J. Roper).

<sup>20</sup> ICC Transcript, July 5, 2006 (ICC Exhibit 5a, p. 78, C.Y. Wycotte).

<sup>21</sup> ICC Transcript, July 5, 2006 (ICC Exhibit 5a, p. 250, I. Johnson).

On July 8, 1893, William Harrison Wright applied for and received pre-emption record no. 745 for lot 323 in Lilloet District at Alkali Lake Creek.<sup>22</sup> Wright's pre-emption was for a lot comprised of 320 acres. Shortly after Wright's pre-emption, Indian Agent Laing-Meason wrote to Indian Superintendent Vowell advising him of Alkali Lake Band's creation of the meadow and the pre-emption by William Wright. In particular, he advised that the government should try to arrange for the meadow to be secured to the Indians to "avoid what appears at present a matter likely to cause serious trouble."<sup>23</sup>

### **Esketemc First Nation's Position**

The First Nation argues that its interest can be established through its immediate and short-term use of the meadow prior to Wright's pre-emption and through the long-term use of the larger surrounding area commonly referred to as Tselute.<sup>24</sup> The First Nation further argues that it held a specific interest in the land at the time of the pre-emption and relies on both the oral testimony and the historical document collection to substantiate this claim. The First Nation points to its traditional irrigation process used at Place Lake which it claims resulted in the creation of the meadow more than two years prior to Wright's pre-emption.

### **Canada's Position**

Canada argues that the First Nation must establish that there was an Indian settlement located on Wright's Meadow in order to establish a cognizable Indian interest. With respect to the term "Indian settlement," Canada points out that it is not defined by the pre-emption legislation at the time the dispute arose.<sup>25</sup> However, Canada interprets the pre-emption legislation to presume that "Indian

---

<sup>22</sup> Certificate of pre-emption record, July 8, 1893, British Columbia Archives (BCA), [8319/93] (ICC Exhibit 1b, pp. 4–5).

<sup>23</sup> William Laing-Meason, Indian Agent, to A.W. Vowell, Indian Superintendent, Victoria, BC, July 19, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 5–6).

<sup>24</sup> Written Submission on Behalf of the Esketemc First Nation, March 2, 2007, p. 1.

<sup>25</sup> Written Submission on Behalf of the Government of Canada, April 20, 2007, para. 54.

settlement” refers to a residential area or cultivated fields of some permanence.<sup>26</sup> Canada further states that cultivation requires tillage or actually applied labour.<sup>27</sup> As such, Canada argues that Wright’s Meadow was not truly cultivated as wild hay grew naturally in an area that was drained and dried out. Canada argues that the First Nation’s use of the meadow was limited, short-term, and not extensive enough to qualify as an Indian settlement or to create a cognizable interest.

### **Findings Re Indian Interest**

This first issue focuses on whether or not the Esketemc Band had an interest in Wright’s Meadow. It is clear to the panel that the parties have approached this question in two distinct ways. The Band argues that the use of the land creates an interest, while Canada argues that an interest is based on whether the land was specifically used as an Indian settlement. In other words, Canada argues that an interest hinges on the existence of an Indian settlement. The panel finds that both approaches to assessing whether an interest exists are valid, and that both approaches support a finding that the Esketemc Band held an interest in Wright’s Meadow.

The starting point for the panel’s analysis is defining a cognizable interest, a concept developed in *Wewaykum Indian Band v. Canada*.<sup>28</sup> In this case, the Supreme Court of Canada examined the claim of two Bands, the Cape Mudge Band and the Campbell River Band, to each other’s reserve lands.

Although the Supreme Court dismissed the claim, it confirmed that a fiduciary relationship exists between the Crown and First Nations, but that this relationship did not always give rise to fiduciary obligations as not all obligations are fiduciary in nature. Instead, fiduciary duties arise when there is a specific interest<sup>29</sup> and where the Crown acts as exclusive intermediary for the Band in relation to this interest.<sup>30</sup> In summary, Justice Binnie stated:

---

<sup>26</sup> Written Submission of Behalf of the Government of Canada, April 20, 2007, para. 56.

<sup>27</sup> Written Submission of Behalf of the Government of Canada, April 20, 2007, para. 61.

<sup>28</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245.

<sup>29</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245 at 286.

<sup>30</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245 at 288.

The starting point in the analysis, therefore, is the Indian bands' interest in specific lands that were subject to the reserve-creation process for their benefit, and in relation to which the Crown constituted itself the exclusive intermediary with the province. The task is to ascertain the content of the fiduciary duty in relation to those specific circumstances.<sup>31</sup>

In *Wewaykum*, the Indian interest was identified as land. Justice Binnie went on to state:

In this case, we are dealing with land, which has generally played a central role in aboriginal economies and cultures. Land was also the subject matter of *Ross River* ("the lands occupied by the Band"), *Blueberry River* and *Guerin* (disposition of existing reserves). Fiduciary protection accorded to Crown dealings with aboriginal interests in land (including reserve creation) has not to date been recognized by this Court in relation to Indian interests other than land outside the framework of s. 35(1) of the *Constitution Act, 1982*.<sup>32</sup>

As the Indian interest in *Wewaykum* was easily identified as reserve land in dispute between two Bands, the Supreme Court of Canada did not actually provide criteria in defining what aspects of land constitute a cognizable interest. However, the Court indicates the importance of land to Aboriginal economies.

In determining whether the Esketemc Band held an interest in Wright's Meadow, the panel must assess what aspects lead to recognizing an Indian interest in land. As noted above, the parties have provided two alternate arguments. The First Nation states that a cognizable interest is based on demonstrated use, while Canada argues this interest is based on the establishment of an Indian settlement. The panel acknowledges that both arguments are valid and demonstrate a cognizable interest in land. This report will proceed with an analysis of both perspectives.

### **Use of Land and the Indian Interest**

During the community session, several Elders provided oral history describing the traditional use and occupation of a large geographical area they called Tselute. The Elders' oral history states that the area of Tselute includes Wright's Meadow.

---

<sup>31</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245 at 292.

<sup>32</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245 at 286–87.



Prior to the pre-emption, there was an immediate need for additional haylands as the First Nation was in possession of a large number of livestock. This situation was the result of the Band developing its farming activities after the time reserves were set aside.<sup>33</sup> Originally, Wright's Meadow was submerged under water. However, the Band had destroyed a beaver dam and drained the meadow in order to develop the haylands. As described by Indian Agent Laing-Meason in a letter dated July 19, 1893, to Indian Superintendent Vowell:

When Mr. O'Reilly laid out the Alkali Lake Reserve very few meadows were asked for, as only those Indians who had cattle required hay; no sleighs or waggons being then used by the Indians and there being a sufficiency of grass in the immediate neighborhood of the Reserve for their saddle horses; at present the [natural] grass has all been fed off everywhere, and hay is absolutely necessary even for saddle horses, but every Indian family now has its sleigh and Span of horses the latter being stabled during the winter and of course requiring hay; it therefore becomes most desirable and a simple of act of justice, that they be allowed to acquire more meadow land; the resident settlers of this neighborhood have hitherto [practically] respected the squatters rights of the Indians to Meadows, [never] attempting to [pre-empt] or purchase such lands [where] utilized by the Indians.

The meadow in question was until last year a Lake, this being drained has become a meadow, which was cut by these Indians for the first time last year – they have since erected fencing and buildings and were preparing to cut their hay this summer when Mr. Wright pre-empted it; under these circumstances I beg to submit for your consideration the possibility of effecting some arrangement with the Provincial Government whereby the Meadow could be secured to the Indians and thus avoid what appears at present a matter likely to cause serious trouble.<sup>34</sup>

The Band then harvested the hay, and periodically flooded and drained the land. Elder Andy Chelsea stated as follows:

All they said was they stopped the creek during – like they'd dam it up in the fall and then watch it in the spring, and if there was going to be too much water, they'd let some of it go. And then during – in May or April, if there's going to be a lot of water,

---

<sup>33</sup> William Laing-Meason, Indian Agent, to A.W. Vowell, Indian Superintendent, Victoria, BC, July 19, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 5–6).

<sup>34</sup> William Laing-Meason, Indian Agent, to A.W. Vowell, Indian Superintendent, Victoria, BC, July 19, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 5–6).

they open the whole dam and let it dry off for cutting hay in July and June or August. So they cut all that.<sup>35</sup>

In addition to haying, when the dam on the creek was broken the Band was able to catch fish from the creek. Elder Willard Dick stated:

they got a big dam now up Place Lake. ... Before that was just a beaver dam there where we used to open it and set a big net in the bottom and catch fish while they're coming out. It was a main resource for food right in the springtime when all other foods are still not out.<sup>36</sup>

The meadow would not have existed but for the intervention of the First Nation. The meadow provided haylands and a source of fish necessary to sustain the First Nation. These uses were key to the First Nation's well-being and economy. Clearly, the Esketemc Band had an interest in the meadow prior to Wright's pre-emption.

### **Indian Settlement and the Indian Interest**

Can Wright's Meadow be described as an Indian settlement, and, if so, is the interest in it cognizable? Canada argues that, in order for an Indian interest to exist, the land must be used as an Indian settlement, which refers to a residential area and / or cultivated fields of some permanence. Canada further specifies that the cultivated fields require tillage or actual applied labour. Consistent with past ICC precedent and an examination of the facts, the panel concludes that Wright's Meadow can be described as an Indian settlement.

As this inquiry deals with pre-emptions and provincial legislation dealing with pre-emptions, the panel begins its analysis by focusing on the *Land Act* of 1884. This provincial legislation provides that:

3. Any person being the head of a family, a widow, or single man over the age of eighteen years, and being a British subject, or any alien, upon his making a declaration of his intention to become a British subject, ... may record any tract of

---

<sup>35</sup> ICC Transcript, April 5, 2006 (ICC Exhibit 5a, p. 56, A. Chelsea).

<sup>36</sup> ICC Transcript, April 5, 2006 (ICC Exhibit 5a, p. 141, W. Dick).

unoccupied and unreserved Crown lands (not being an Indian settlement) not exceeding three hundred and twenty acres in extent ... Provided, that such right shall not be held to extend to any of the aborigines of this continent, except to such as shall have obtained permission in writing to so record by a special order of the Lieutenant-Governor in Council.<sup>37</sup>

This legislation does not define Indian settlement, nor is there much insight to be gained from the case law. As a result, the panel is guided by previous ICC inquiries which have dealt with this term. We begin our analysis with the definition of “Indian settlement” contained in the *Mamalelegala Inquiry*<sup>38</sup> in the context of the *Land Act*:

Section 56 of the provincial *Land Act* expressly provided that no timber licences were to be granted “in respect of lands forming the site of an Indian settlement or reserve.” Although we do not purport to offer any exhaustive definition of the term “Indian settlement,” when section 56 [of the *Land Act*] was enacted it is likely that the legislature intended to protect at least those lands for which there was some investment of labour on the part of the Indians – which could include village sites, fishing stations, fur-trading posts, clearings, burial grounds, and cultivated fields – regardless of whether or not they were immediately adjacent to or in the proximity of other dwellings. Furthermore, it was not strictly necessary for there to be a permanent structure on the land, providing there is evidence of collective use and occupation by the band.

... In assessing whether any of the lands encompassed by the Band's McKenna-McBride applications were Indian settlement lands, it is essential to take into account the distinctive way in which the Mamalelegala Qwe'Qwa'Sot'Enox used the land and the type of houses they built and used during the early part of this century. Since one traditional house could house a number of families, the existence of even one house provides ample evidence that an Indian settlement existed at that location.<sup>39</sup>

---

<sup>37</sup> *Land Act*, RSBC 1884, c. 16, s. 5–23 (Exhibit 6a, pp. 2–4, 7).

<sup>38</sup> ICC, *Mamalelegala Qwe'Qwa'Sot'Enox Band: McKenna-McBride Applications Inquiry* (Ottawa, March 1997), reported (1998) 7 ICCP 199.

<sup>39</sup> ICC, *Mamalelegala Qwe'Qwa'Sot'Enox Band: McKenna-McBride Applications Inquiry* (Ottawa, March 1997), reported (1998) 7 ICCP 199 at 274.

In the *Williams Lake* inquiry,<sup>40</sup> the ICC expanded on its definition of an Indian settlement by including cultural uses of the land:

Based on principles developed in the *Mamalelegala* inquiry, the panel in this inquiry must take into consideration the distinctive way this Band used the land and the type of houses its members built. This Band traditionally used its lands on the basis of “seasonal rounds” in which specific areas of land were used for specific reasons at specific times.<sup>41</sup>

The ICC has adopted a broad approach to defining the term “Indian settlement” to acknowledge the various ways in which land has been used and occupied by First Nations, and to highlight underlying cultural approaches to settlement. This broad approach has conflicted with Canada’s definition of an Indian settlement, which previously required present use (that is, active use at the time of pre-emption) and occupation. In this inquiry, while Canada appears to acknowledge that cultivated fields can be an Indian settlement, Canada argues that this cultivated field must demonstrate tillage or applied labour. Canada suggests that the meadow grew wild hay naturally without the need of cultivation or tillage of the soil, and therefore the activities briefly carried out on the lands prior to the pre-emption do not meet the test to be considered an Indian settlement. However, the panel finds that this narrow approach is not supported by the historical facts.

The panel must consider the approach of officials at the relevant historical time to an “Indian settlement.” In a report prepared for this inquiry, Anne Seymour wrote that the drafters of the first pre-emption legislation defined “Indian Settlements” as follows:

We understand an Indian Settlement to be not a permanent standing Village but such a Village or Home as Indians are accustomed to have and it appears to be an understood custom with the Indians of this District as with many others to leave their Homes or Villages for months together taking their House with them.<sup>42</sup>

---

<sup>40</sup> ICC, *Williams Lake Indian Band: Village Site Inquiry* (Ottawa, March 2006).

<sup>41</sup> ICC, *Williams Lake Indian Band: Village Site Inquiry* (Ottawa, March 2006), 24.

<sup>42</sup> Anne Seymour, “Pre-emption Policies, Indian Settlements & Reserve Establishment in British Columbia, 1860–1898,” prepared for Specific Claims Branch, Indian and Northern Affairs Canada, November 17, 2005, pp. 20–21 (ICC Exhibit 3b, p. 13).

In addition, the Band pointed out that, in 1862, Colonial Secretary William Young's direction was that "Indian settlements include fields, habitation sites, and lands recently used."<sup>43</sup> From this evidence, it appears that officials understood the term Indian settlement to include areas that the Band would have occupied on a seasonal basis, and which may or may not have included permanent, standing structures. Both the documentary and oral histories confirm that this Band had built and lived in A-frame houses in the area of Place Lake and resided there during summer and winter months.<sup>44</sup> More importantly, officials at the time also appeared to acknowledge a broad range of uses of land which might include, but were not limited to, cultivation or tillage. Based on the research prepared for this inquiry and government reports, the panel finds that officials at the time of the pre-emption were more likely to consider a broad use of land, including the Band's winter and summer use of this land, combined with their A-frame houses and other structures, as Indian settlement lands. The panel infers that officials were likely to accept meadows as Indian settlements. Moreover, in this claim's history, it was recommended that haylands and meadows be set aside for the Esketemc Band. A.W. Vowell, Indian Superintendent, writing to the Deputy Superintendent General in a report on his July 1894 trip to the Alkali Lake area wrote:

For my own part I consider that their demands are worthy of consideration and I would strongly urge that all these patches of meadow lands situated in the mountains which have for years been used by them and which come under the head of "waste lands of the Crown" be reserved to them without delay.<sup>45</sup>

The panel further considered what local settlers living in the area might have thought of the Band's use of this land and concluded that local settlers were aware of the Band's assertion to a right of ownership. Indian Agent Laing-Meason, in reporting the dispute between the Band and Wright,

---

<sup>43</sup> Written Submission on Behalf of the Esketemc First Nation, April 30, 2007, para. 10.

<sup>44</sup> A.W. Vowell, Indian Superintendent, Victoria, BC, August 6, 1894, to Hayter Reed, Deputy Superintendent General of Indian Affairs, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 33–38).

<sup>45</sup> A.W. Vowell, Indian Superintendent, Victoria, BC, August 6, 1894, to Hayter Reed, Deputy Superintendent General of Indian Affairs, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 33–38).

wrote that “the resident settlers of this neighbourhood have hitherto [practically] respected the squatters rights of the Indians to Meadows.”<sup>46</sup>

From the perspective of local settlers and government officials, the panel concludes that it appears that there was common knowledge that the Esketmec Band had been occupying the land around Place Lake as an Indian settlement and had further turned Place Lake into a meadow, making improvements to the land and asserting it as their own. The panel therefore concludes that the Band took sufficient steps and made distinctive use of its irrigation process which resulted in the creation of the meadow and in the Band’s ability to cultivate hay.

Lastly, Canada argues that the Band’s use of the land was limited and short-term and not extensive enough to establish those lands as Indian settlement lands. The panel, however, holds that this negates the findings of pithouses as reported by Beth Bedard, which establish long-term occupation of the lands surrounding the meadow by the Esketemc Band. The evidence indicates that the Esketemc people practised traditional cultivation and alternating flooding and hay-raising within the meadowlands, and the location of pithouses in the immediate environs of the cultivated lands establishes that this usage was a well-established, consistent part of the Esketemc Band’s traditional seasonal round of subsistence. Insofar as Canada takes the position that the status of “Indian settlement lands” may be obtained through settlement and/or cultivation, we find that the traditional cultivation practised by the Esketemc in Wright’s Meadow is sufficient to ground a clear, cognizable interest in those lands commensurate with their status as Indian settlement lands. That the Band resided in the immediate area of the cultivated lands merely underscores the presence and importance of that usage to the Esketemc people.

After applying principles from past ICC reports and reviewing the documentary and oral history evidence, the panel concludes that the site at Wright’s Meadow constituted Indian settlement lands at the time of the pre-emption.

---

<sup>46</sup> William Laing-Meason, Indian Agent, to A.W. Vowell, Indian Superintendent, Victoria, BC, July 19, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 5–6).

**ISSUES 2 AND 3: FIDUCIARY DUTY**

- 2 If the Band had an interest in the lands, did the federal Crown have a duty to protect that interest?**
- 3 If the federal Crown had a duty to protect the Band's interest, did it discharge that duty?**

The heart of this claim is whether the Crown's fiduciary duties to the Esketemc First Nation were breached; consequently, the focus of this report is on the fiduciary analysis. As the panel has found that the Esketemc Band held a cognizable interest in Wright's meadow, the panel must now determine if a fiduciary duty existed and, if so, whether that fiduciary duty was breached. As these two issues are related, they will be dealt with by the panel in the same section. With respect to these issues, the panel finds that a fiduciary duty exists in relation to the meadow. However, the panel differs in opinion on whether there was a breach of fiduciary duty. While a majority finds a breach, a dissenting opinion on this issue follows this analysis.

**Background**

On July 16, 1893, Indian Agent William Laing-Meason advised Indian Superintendent A.W. Vowell that conflict had arisen between the Alkali Lake band members and a settler named William Wright over the meadowlands at Place Lake, which Mr. Wright had pre-empted.<sup>47</sup> A few days later, Laing-Meason sent another report to Vowell requesting that he arrange to have the meadow set aside as a reserve for the Alkali Lake Band:

under these circumstances I beg to submit for your consideration the possibility of effecting some arrangement with the Provincial Government whereby the Meadow could be secured to the Indians and thus avoid what appears at present a matter likely to cause serious trouble.<sup>48</sup>

---

<sup>47</sup> William Laing-Meason, Indian Agent, to A.W. Vowell, Indian Superintendent, Victoria, BC, July 16, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 3-4).

<sup>48</sup> William Laing-Meason, Indian Agent, to A.W. Vowell, Indian Superintendent, Victoria, BC, July 19, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 5-6).

Laing-Meason's successor, Indian Agent Gomer Johns also advised that an agreement should be made to secure the meadow for the Alkali Lake Band.<sup>49</sup> On October 26, 1893, Chief August of the Alkali Lake Band wrote to Indian Superintendent A.W. Vowell, appealing to him to resolve the conflict with Wright and to allow the Band to keep the meadow. Chief August stated:

I must acknowledge the Government has given us quite a lot of land but the biggest and best piece of land it gave us is no account to us only for a short time in the winter for pasture as there is no water on it, when my people go there in the Summer to gather berries they have to go to the river to get water to cook with and there is no show of getting any water on it and on all of the other land the Government gave us there is not more than enough meadow to cut 15 ton of hay so if those other meadows are taken away from us we will have to dispose of our stock and how we will live I do not know as it is if we were left alone I think we could support ourselves, this trouble has been going on since July and now Mr. Laing W. Meason, your former Indian Agent, he has gone and Staked off another of the Meadows that my people have been cutting, the trouble had been layed before your present Indian Agent this long time but there has been nothing done in regard to it so I appeal to you for help, please excuse me for bothering you but I do not know how else to look to for help. I forgot to state there is over 200 people in my reserve and it will starve all of us if we do not be allowed to keep those meadows so please come and settle this trouble for us.<sup>50</sup>

On November 17, 1893, Agent Gomer Johns again wrote to Indian Superintendent Vowell informing him that he had investigated the matter and concluded that the meadow would be a "very serious loss" to the Alkali Lake Band, but would "not lead to starvation."<sup>51</sup> In early 1894, Father Lejacq, OMI, reported that the Alkali Lake Band had consulted him in its attempts to have the meadow set aside as reserve. Father Lejacq stated:

When the Commission, appointed by the Government, had marked out the Reservation for the Alkali Lake Band; the Indians made the remark that there was no meadow land in the said reservation, so they begged the Commission for [illegible

---

<sup>49</sup> Gomer Johns, Indian Agent, Williams Lake Agency, 150 Mile House, to unidentified recipient, September 21, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 11).

<sup>50</sup> Chief August to Vowell, October 26, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 14–15).

<sup>51</sup> Gomer Johns, Indian Agent, to A.W. Vowell, Indian Superintendent, Victoria, BC, November 17, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 16–21).



word] land; then Judge O'Reilly told them to look round and try to find some good place for making hay, to take what they could find, to fix it and the Government would grant it to them. Now the Indians acting according to the suggestion of the Commissioner, located a place, a swampy place, at the head of this creek drained it, cut the brush, put fences, built stables, even houses, in a word, made a good meadow out of useless swamp and now when they are beginning to reap the fruits of their hard labour, a white man comes and wants to snatch it from their hands ...

I do not know what is the policy of the Government in such cases as this; but if I were asked any advice, I would tell the Government to grant to the Indians that piece of land and send warning to Mr. Wright to pre-empt somewhere else: this would be the shortest and cheapest way of settling the matter, and coming out of the [illegible word]; and Mr. Wright, if he had had a grain of common sense would never have tried to take that piece of land from the Indians; the place will be a great boon to the Indians, fixed as they are; but neither Mr. Wright nor any other white man can make a living on the same place ...<sup>52</sup>

Soon after Father Lejacq's letter was received by Provincial Attorney General Theodore Davie, Davie asked BC Government Agent Soues whether the issuance of Wright's pre-emption could be delayed in order to investigate the allegation made by Father Lejacq.<sup>53</sup> Soues suggested that Indian Reserve Commissioner O'Reilly be consulted.<sup>54</sup> Davie then wrote to O'Reilly:

If it should be the case that the pre-emption has been obtained by Mr. Wright under false pretences, for lands practically set aside for the use of the Indians and improved for their purposes, steps should be, I think, at once taken on behalf of the Indians before the Commissioner to set the record aside.<sup>55</sup>

In a letter dated February 7, 1894, O'Reilly stated that he did not set aside the particular meadow pre-empted by Wright, and that he had not been requested to set the meadow aside. However, O'Reilly indicated that he would attempt to set aside other meadows used for hay and subject to pre-emption

---

<sup>52</sup> J.M.J. Lejacq, OMI, St Joseph's Mission, Williams Lake, to [unidentified recipient], January 18, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, p. 46).

<sup>53</sup> Theodore Davie, Victoria, BC, to [F. Soues], Government Agent, Clinton, BC, January 26, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, p. 49).

<sup>54</sup> F. Soues, Clinton, BC, to Theodore Davie, Attorney General, Victoria, BC, January 29, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit, 1c, pp. 51–52).

<sup>55</sup> Theodore Davie, Victoria, BC, to P. O'Reilly, February 3, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, p. 54).

for the Esketemc Band. He stated that he did not encourage the First Nation to occupy and improve land outside of the lands set aside as a reserve. O'Reilly also questioned why he had not been informed of the First Nation's request for the lands sooner. In addition, O'Reilly suggested that the Government Agent not accept any further pre-emption applications.<sup>56</sup>

Vowell visited the disputed meadow in July 1894. In his report dated August 6, 1894, he wrote:

At present from 100 to 160 tons of wild hay can be cut upon it and it has been their custom to cut hay there and in the winter drive their cattle there and feed them; they have also for a distance of some seven miles cut a sleigh road through the timber to enable them when required to haul some of the hay to other places. They have also done some fencing around a portion of it, and have built some houses for winter use. I may also state that when on my way to the meadow ... several smaller ones were brought to my notice where different members of the band have for years been cutting hay. They ... claim that such facilities for feeding their stock during the winter months is an absolute necessity, as the amount of hay possible to obtain from their reserves is insignificant when compared with their requirements. They have amongst them over 200 head of cattle besides many horses. ... and as they have comparatively little cultivable land, their chief support centres in their cattle. ... They were not unreasonable, but still kept strongly to the point that without the meadows they and their children would be without sufficient means for their support. For my own part I consider that their demands are worthy of consideration and I would strongly urge that all these patches of meadow lands situated in the mountains which have for years been used by them and which come under the head of "waste lands of the Crown" be reserved to them without delay. ...

I may say that the Indians have promised not to interfere with Mr. Wright should he go to take possession, in the meantime the Chief and his people are going to make an effort to settle the matter amicably with Wright whereby they can still retain possession of the meadow, in which case it should be at once made an Indian Reserve.<sup>57</sup>

The Deputy Superintendent General of Indian Affairs wrote to Indian Superintendent A.W. Vowell on August 16, 1894, instructing him as follows:

---

<sup>56</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Theo. Davie, Attorney General, Victoria, BC, February 7, 1894, LAC, RG 10, vol. 1278, pp. 298–300 (ICC Exhibit 1a, pp. 22–24).

<sup>57</sup> A. W. Vowell, Indian Superintendent, Indian Office, Department of Indian Affairs, Victoria, BC, to Deputy Superintendent General, August 6, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 34–37).

[I]f the Indians manage to induce Mr. Wright to relinquish his claim you should, without delay, approach the Provincial authorities, through the Reserve Commissioners if necessary, and endeavour to get them to secure the land to the Indians, or failing that, ask them to apportion some others in lieu of the meadow, and also reserve to the Indians any other hay lands used by them, and considered by you really necessary for the support of their stock.<sup>58</sup>

The BC Chief Commissioner of Lands and Works (CCLW), F.G. Vernon, wrote to Indian Reserve Commissioner O'Reilly, asking whether the Esketemc First Nation had any right to or need of the meadow.<sup>59</sup> O'Reilly replied on August 26, 1894, referring the CCLW to his February 7, 1894, letter to Attorney General Davie, in which O'Reilly had dismissed the First Nation's claim to the meadow.<sup>60</sup> As a result, on September 4, 1894, Vernon wrote to Soues, BC Government Agent, informing him that the Esketemc First Nation could "claim compensation if they are debarred from acquiring the land"<sup>61</sup> and instructed him to visit the meadow to "make an approximate estimate of the value of the improvements made by the Indians and also by Mr. Wright (if any)."<sup>62</sup> On October 16, 1894, C. Phair, Acting Government Agent, reported on his visit to the meadow and his evaluations. Indian Agent Bell also reported to Indian Superintendent Vowell on this evaluation of the First Nation's improvements.<sup>63</sup>

---

<sup>58</sup> Deputy Superintendent General of Indian Affairs to Indian Superintendent A.W. Vowell, August 16, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 39).

<sup>59</sup> F. G. Vernon, Chief Commissioner of Lands and Works (CCLW), to P. O'Reilly, Indian Reserve Commissioner, Victoria, August 22, 1894, LAC, RG 10, vol. 11014, p. 28 (ICC Exhibit 1a, p. 40).

<sup>60</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, to CCLW, August 26, 1894, LAC, RG 10, vol. 1279, p. 1 (ICC Exhibit 1a, p. 41). See also P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Theo. Davie, Attorney General, Victoria, BC, February 7, 1894, LAC, RG 10, vol. 1278, pp. 298–300 (ICC Exhibit 1a, pp. 22–24).

<sup>61</sup> CCLW, Victoria, to F. Soues, Government Agent, September 4, 1894, no file reference available (ICC Exhibit 1a, p. 42).

<sup>62</sup> CCLW, Victoria, to F. Soues, Government Agent, September 4, 1894, no file reference available (ICC Exhibit 1a, p. 42).

<sup>63</sup> [Bell, Indian Agent], to A.W. Vowell, October 16, 1894, LAC, RG 10, vol. 11014, p. 47A (ICC Exhibit 1a, p. 51).

In 1895, Indian Reserve Commissioner O'Reilly set aside an additional seven reserves for the Esketemc First Nation. In a report to the Deputy Superintendent General of Indian Affairs, O'Reilly wrote:

Though these Indians are already in possession of reserves allotted to them in 1881, and which contain 5587 [*sic*] acres,<sup>64</sup> they have recently complained of a scarcity of hayland as their bands of cattle, and horses have largely increased, and it was with a view to supplying this want that my present visit to Alkali lake was undertaken.

The Chief "August" and a large number of his people accompanied me to point out the several pieces of land which they desired to have secured to them; Mr. Agent Bell also was present, and assisted much in the selection of the seven following locations.

...

The meadow lands in all the above reserves are capable of being enlarged by clearing, with a very small amount of labor; the Indians at present only using those portions that are naturally free of brush. They are at too great an altitude to admit of their being used for any other purpose.<sup>65</sup>

### **Esketemc First Nation's Position**

The First Nation argues that it looked solely to the Department of Indian Affairs (DIA) to protect its interests. The actions of the Indian Agents clearly show that they, together with Indian Superintendent Vowell as well as other government officials took it upon themselves to act as "exclusive intermediaries."<sup>66</sup> The Indian Agents involved in the matter including Laing-Meason and Bell requested that some arrangement be made to secure the meadow to the Band. However, in the end, the DIA left the matter to the Band to sort out itself.<sup>67</sup> The Band argues that the federal Crown failed to discharge the duty that it owed by:

---

<sup>64</sup> This should read 3,587 acres.

<sup>65</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Deputy Superintendent General of Indian Affairs, September 26, 1895, LAC, RG 10, vol. 1279, pp. 74–75; Federal Collection, vol. 14, pp. 117–25 (ICC Exhibit 1c, pp. 66–69).

<sup>66</sup> Written Submission on Behalf of the Esketemc First Nation, March 2, 2007, p. 15.

<sup>67</sup> Written Submission on Behalf of the Esketemc First Nation, March 2, 2007, p. 21.

- 1 failing to challenge Wright's pre-emption;
- 2 failing to investigate whether Wright had been in occupation of the lands as he claimed, which said claim allowed him to receive a Crown grant;
- 3 failing to investigate the reasons why Wright wished to pre-empt this particular parcel of land;
- 4 failing to enquire as to the relationship between Wright and Meason;
- 5 failing to acquire the lands in question for the Alkali Lake Band for the sum of \$250 and then failing to have them set aside reserve land when offered the opportunity to do so by Wright on August 13, 1893;
- 6 failing to obtain compensation for the Alkali Lake Band's improvements when Wright offered to pay \$200 for them on August 13, 1893, or when the improvements were subsequently valued in 1894.<sup>68</sup>

### **Canada's Position**

Canada disagrees that the Crown agents at the time were exclusive intermediaries for the Band. Canada argues that, throughout the times in question, the Band was fully engaged in explaining the nature of its complaint to representatives of both the federal and provincial Crowns.<sup>69</sup> This was not a situation where the Band surrendered all discretionary control to the federal Crown to protect its interest.<sup>70</sup> On the contrary, the Band lobbied both Crowns with its available evidence in an attempt to secure the meadow for its own use.<sup>71</sup>

It is Canada's position that Wright's Meadow was never reserve land; therefore, there is nothing that would trigger the federal Crown's fiduciary duty to protect the land from pre-emption. Canada did not have a duty to protect specific lands from being pre-empted.<sup>72</sup> The conduct of the federal Crown's agent Commissioner O'Reilly in the initial setting aside of reserve lands in 1881

---

<sup>68</sup> Written Submission on Behalf of the Esketemc First Nation, March 2, 2007, p. 19.

<sup>69</sup> Written Submission on Behalf of the Government of Canada, April 20, 2007, p. 23.

<sup>70</sup> Written Submission on Behalf of the Government of Canada, April 20, 2007, p. 23.

<sup>71</sup> Written Submission on Behalf of the Government of Canada, April 20, 2007, p. 23.

<sup>72</sup> Written Submission on Behalf of the Government of Canada, April 20, 2007, p. 20.

and continuing until he set aside the second parcels of land in 1895, fully complied with the Crown's fiduciary obligation as set out in *Wewaykum*.<sup>73</sup>

The meadow in question was provincial Crown land, not subject to control by the federal Crown. The latter had no authority to unilaterally set aside the meadow as a reserve.<sup>74</sup> The creation of reserves in the province of British Columbia required the joint action of both Crowns.<sup>75</sup> Although the federal Crown advised the provincial Crown that the Esketemc First Nation believed the meadow should not be available for pre-emption, the provincial Crown, after a thorough investigation, disagreed and approved Wright's application.<sup>76</sup>

### **Panel's Reasons**

As noted above, although the panel is in agreement that a fiduciary duty exists in relation to the meadow, the panel differs in opinion on whether this duty was breached. Commissioners Bellegarde and Holman have found a breach, while Commissioner Dickson-Gilmore has not. Commissioner Dickson-Gilmore's reasons follow those of Commissioners Bellegarde and Holman.

### **Reasons of Commissioners Bellegarde and Holman**

#### ***The Fiduciary Relationship***

Both parties have agreed on the background to the fiduciary relationship between First Nations and the Crown. This fiduciary relationship was first acknowledged by the Supreme Court of Canada in *Guerin v. The Queen*.<sup>77</sup> In this case, the Musqueam Band surrendered reserve land for lease to a golf club; however, the Band later learned that the terms of the lease obtained by the Crown were significantly different – and less favourable – from those the Band had agreed to. The Court unanimously found that, by unilaterally changing the terms of a lease originally agreed to by the

---

<sup>73</sup> Written Submission on Behalf of the Government of Canada, April 20, p. 20.

<sup>74</sup> Written Submission on Behalf of the Government of Canada, April 20, p. 22.

<sup>75</sup> Written Submission on Behalf of the Government of Canada, April 20, p. 22.

<sup>76</sup> Written Submission on Behalf of the Government of Canada, April 20, p. 22.

<sup>77</sup> *Guerin v. The Queen*, [1984] 2 SCR 335.

Band, Canada had breached its duty to the Band. Dickson J, with the concurrence of Beetz, Chouinard, and Lamer JJ, stated the following regarding fiduciary principles:

In my view, the nature of Indian title and the framework of the statutory scheme established for disposing of Indian land places upon the Crown an equitable obligation, enforceable by the courts, to deal with the land for the benefit of the Indians. This obligation does not amount to a trust in the private law sense. It is rather a fiduciary duty. If, however, the Crown breaches this fiduciary duty it will be liable to the Indians in the same way and to the same extent as if such a trust were in effect.

The fiduciary relationship between the Crown and the Indians has its roots in the concept of aboriginal, native or Indian title. The fact that Indian bands have a certain interest in lands does not, however, in itself give rise to a fiduciary relationship between the Indians and the Crown. The conclusion that the Crown is a fiduciary depends upon the further proposition that the Indian interest in the land is inalienable except upon surrender to the Crown.<sup>78</sup>

In identifying a fiduciary relationship, Dickson J quoted Professor E.J. Weinrib's statement: "[T]he hallmark of a fiduciary relation is that the relative legal positions are such that one party is at the mercy of the other's discretion."<sup>79</sup> This description has been supported in other Supreme Court of Canada judgments.<sup>80</sup>

Although the courts have recognized that a fiduciary relationship exists between the Crown and Aboriginal people, the courts have also noted that not all aspects of the fiduciary relationship will give rise to fiduciary obligations.<sup>81</sup> To date, the Supreme Court of Canada has recognized certain

---

<sup>78</sup> *Guerin v. The Queen*, [1984] 2 SCR 335 at 376.

<sup>79</sup> *Guerin v. The Queen*, [1984] 2 SCR 335 at 384.

<sup>80</sup> *Lac Minerals v. International Corona Resources Ltd.*, [1989] 2 SCR 574: dependency or vulnerability as an essential element indicating a fiduciary relationship. *Frame v. Smith*, [1987] 2 SCR 99: exercise of discretion or power; unilateral exercise of power; and vulnerability of the beneficiary. The beneficiary is subject to discretionary uses of power as another element characterizing a fiduciary relationship. *Hodgkinson v. Simms*, [1994] 3 SCR 377: reasonable expectations of one party expecting another party to act in their best interests may also characterize a fiduciary relationship.

<sup>81</sup> *Quebec (A.G.) v. Canada (National Energy Board)*, [1994] 1 SCR 159 at 183; *M. (K) v. M. (H)* (1992) 96 DLR (4th) 289 at 326 (SCC).

fiduciary obligations on the Crown which arise prior to a surrender of reserve lands,<sup>82</sup> following a surrender of reserve lands,<sup>83</sup> before the expropriation of reserve lands,<sup>84</sup> or as a result of the regulation or infringement of a constitutionally protected Aboriginal or treaty right.<sup>85</sup> More recently, the Supreme Court of Canada has recognized the existence of a fiduciary duty in relation to reserve creation in *Ross River*, and more importantly, in *Wewaykum Indian Band v. Canada*.<sup>86</sup> This case is also the Supreme Court of Canada's most recent statement regarding the Crown / Aboriginal fiduciary relationship and when this relationship gives rise to a fiduciary duty.

In *Wewaykum*, the Court said the following regarding fiduciary law:

1. The content of the Crown's fiduciary duty towards aboriginal peoples varies with the nature and importance of the interest sought to be protected. It does not provide a general indemnity.
2. Prior to reserve creation, the Crown exercises a public law function under the *Indian Act* – which is subject to supervision by the courts exercising public law remedies. At that stage a fiduciary relationship may also arise but, in that respect, the Crown's duty is limited to the basic obligations of loyalty, good faith in the discharge of its mandate, providing full disclosure appropriate to the subject matter, and acting with ordinary prudence with a view to the best interest of the aboriginal beneficiaries.
3. Once a reserve is created, the content of the Crown's fiduciary duty expands to include the protection and preservation of the band's quasi-proprietary interest in the reserve from exploitation.<sup>87</sup>

Essentially, the Supreme Court confirmed that the Crown / Aboriginal relationship is a fiduciary relationship, and “not all obligations existing between the parties to a fiduciary relationship are

---

<sup>82</sup> *Blueberry River Indian Band v. Canada* (1995), 130 DLR (4th) 193 (SCC). In a concurring judgment, McLachlin J observed that, prior to consenting to a surrender proposed by an Indian Band, the Crown has a fiduciary duty limited to preventing exploitative bargains (at 208).

<sup>83</sup> *Guerin v. The Queen*, [1984] 2 SCR 335.

<sup>84</sup> *Osoyoos Indian Band v. Oliver (Town)*, [2001] 3 SCR 746.

<sup>85</sup> *R. v. Sparrow*, [1990] 1 SCR 1075.

<sup>86</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245.

<sup>87</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245 at 289–90.



fiduciary in nature.”<sup>88</sup> The Court also acknowledged that “[t]he fiduciary duty imposed on the Crown does not exist at large but in relation to specific Indian interests.”<sup>89</sup> In *Wewaykum*, this specific Indian interest was identified as land.

An Indian band’s interest in specific lands that are subject to the reserve-creation process and where the Crown acts as the exclusive intermediary with the province can trigger a fiduciary duty. The Court said the following with respect to the content of a pre-reserve-creation fiduciary duty:

Here ... the nature and importance of the appellant bands’ interest in these lands prior to 1938, and the Crown’s intervention as the exclusive intermediary to deal with others (including the province) on their behalf, imposed on the Crown a fiduciary duty to act with respect to the interest of the aboriginal peoples with loyalty, good faith, full disclosure appropriate to the subject matter and with “ordinary” diligence in what it reasonably regarded as the best interest of the beneficiaries.<sup>90</sup>

The Court advised that consideration must be given to the context of the time at reserve creation and the likelihood of the Crown facing conflicting demands. The Crown is not an ordinary fiduciary and must balance the public interest with the Aboriginal interest:

When exercising ordinary government powers in matters involving disputes between Indians and non-Indians, the Crown was (and is) obliged to have regard to the interest of all affected parties, not just the Indian interest. The Crown can be no ordinary fiduciary; it wears many hats and represents many interests, some of which cannot help but be conflicting: *Samson Indian Nation and Band v. Canada*, [1995] 2 F.C. 762 (C.A.).<sup>91</sup>

Having already found that the Esketemc First Nation had a cognizable interest in Wright’s Meadow, as shown through the First Nation’s occupation of the land, seasonal use in summer and winter months, structures built by the First Nation such as roads, homes, fencing, and the creation of the meadow through the First Nation’s irrigation process, the majority must turn its attention to

---

<sup>88</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245 at 288.

<sup>89</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245 at 286.

<sup>90</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245 at 294.

<sup>91</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245 at 293.

the question of whether the Crown assumed responsibility as the exclusive intermediary to deal with the province and others on behalf of the Band and, if so, whether the Crown breached its pre-reserve creation fiduciary duties. To answer this question, the fiduciary duty must be examined at the time of the 1893 pre-emption.

### ***The 1893 Pre-emption***

As noted in *Wewaykum*, in the pre-Confederation era in British Columbia, the reserve-creation process required cooperation between both the federal and provincial Crowns as well as the First Nation. By 1893, the Crown and the First Nation were in a fiduciary relationship and, with respect to setting aside lands for reserve purposes, the Crown was acting exclusively for Esketemc. There are three supporting reasons that lead to the conclusion that Canada was an exclusive intermediary in dealing with the province on behalf of the Esketemc Band. First, the *Terms of Union* recognize the federal Crown as assuming responsibility in dealing with the provincial Crown for the purposes of conveying land for Indian reserves. Secondly, the *Land Act, 1884*, disallowed Indian bands from acquiring lands through the province directly. As a result, only the federal Crown could act on behalf of Indian bands in British Columbia. Finally, the particular circumstances in which Indian Reserve Commissioner Peter O'Reilly undertook to set aside further lands on behalf of the First Nation indicate that Canada was an exclusive intermediary for the Esketemc Band as early as 1881, when O'Reilly met with the Band to set aside additional reserves. As a result, the majority finds that the Crown was acting as the Band's exclusive intermediary and therefore owed pre-reserve-creation fiduciary duties to the Band. This analysis will now turn to determining whether these pre-reserve-creation fiduciary duties were breached with respect to the meadow.

In July 1881, O'Reilly enlarged IR 1 by 550 acres, and set aside six additional reserves and two fishing stations.<sup>92</sup> O'Reilly acknowledged difficulty in finding suitable agricultural lands and the Band's inclination to farm,<sup>93</sup> but also noted the need for haylands:

The Indians of Alkali Lake possess 561 Horses, besides 123 Cattle, and 69 Sheep; their great desire was to obtain as much hay land as possible: to satisfy their just requirements it became necessary to make six (6) separate reservations, amounting in all to about 3310 acres [plus 3 acres at IR 7], and this embraces all the good land in the neighborhood, not already alienated.<sup>94</sup>

Notably, O'Reilly set aside land that had already been pre-empted:

I have also reserved for this tribe, two important fisheries; ... As I have been informed, they have never ceased to use this fishery, notwithstanding that as far back as April 1873 the land was included in a pre-emption, made by Thomas Roper, upon which he obtained a Certificate of Improvement, in December 1875. Subsequently Mr. Roper sold his interest to Mr. Felker, who at present claims to be the owner.

Mr. Felker was absent during my stay in this neighborhood, consequently I had no opportunity of seeing him. I am, however, led to believe that he will offer no objection to the land being set apart for the Indians; it possesses little or no value except as an Indian fishing station.<sup>95</sup>

---

<sup>92</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, pp. 143–66 (ICC Exhibit 1c, p. 12).

<sup>93</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, pp. 143–44, 148–49 (ICC Exhibit 1c, pp. 11–12, 16–17).

<sup>94</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, p. 144 (ICC Exhibit 1c, p. 12).

<sup>95</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, pp. 150–51 (ICC Exhibit 1c, pp. 19–20).

These reserves were surveyed by W.S. Jemmett in 1883 and approved by the Chief Commissioner of Lands and Works in 1884.<sup>96</sup>

With respect to the meadow, the majority must determine whether the Crown was the Band's exclusive intermediary. If the Crown was the Band's exclusive intermediary, then a fiduciary duty was owed to the Band. The following facts, set out in detail in Part II of this report and in Appendix A are relevant:

- After Wright pre-empted the meadow in 1893, Chief August wrote to the Indian Superintendent Vowell, advising of the situation and requesting assistance.<sup>97</sup>
- An initial investigation in November 1893 by Indian Agent Gomer Johns revealed that the meadow in dispute produced much of the hay used by the First Nation.
- When provincial officials became involved, BC Government Agent F. Soues believed that the pre-emption was properly made. However, a letter from Father Lejacq advocating on behalf of the Esketemc Band delayed the issuance of the pre-emption and prompted an investigation. The matter was referred to O'Reilly, and the province indicated a willingness to set aside the pre-emption record.
- In September 1893, Wright offered to sell the pre-emption for \$250 or purchase it for \$200.
- Indian Superintendent Vowell visited the area in July 1894, and noted the history in creating the meadow, as well as its current use by the Band. Vowell specifically noted that, if the Band could settle amicably with Wright, then the meadow could be set aside as a reserve.

Ultimately, it was the federal Crown's responsibility to ensure that the Band's interest in the meadow was protected once the Band expressed that interest. Once the interest was expressed, the Crown undertook to act on behalf of the Esketemc Band. As well, the province, once it became aware of the dispute, referred the matter back to the federal Crown to resolve. All of these actions indicate that the federal Crown was acting exclusively on behalf on the Esketemc Band with respect to the meadow. As a result, the majority finds that federal Crown owed a fiduciary duty to the Esketemc First Nation.

---

<sup>96</sup> Indian Claims Commission, *Esketemc First Nation: Indian Reserves 15, 17, and 18 Inquiry* (Ottawa, November 2001), reported (2002) 15 ICCP 51.

<sup>97</sup> Chief August to Vowell, October 26, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 14–15).

As a pre-reserve-creation fiduciary duty was owed to the First Nation with respect to the meadow, the panel must determine whether this duty was breached. The content of this fiduciary duty is for the Crown to act with loyalty, good faith, full disclosure appropriate to the subject matter, and with “ordinary” diligence in what it reasonably regarded as the best interest of the beneficiaries.<sup>98</sup> In other words, the Crown, prior to the setting aside of a reserve, owes basic fiduciary duties to a Band with a cognizable interest. In this particular situation, the panel must determine whether the Crown breached its fiduciary duties. The majority’s focus is specifically on Vowell’s visit and his conclusions, as his investigation was the last one conducted.

When Vowell visited the Alkali Lake area in July 1894, the province had not yet issued a pre-emption record to Wright for the meadow. Instead, the province chose to delay its process and seemed willing to not issue the record at all, pending the outcome of a federal investigation. As well, in September 1893, Indian Agent Johns reported that Wright “would take \$250.00 or would give \$200.00.”<sup>99</sup> Wright was willing to give up his pre-emption for \$250.00. For all intents and purposes, the ball was in the federal Crown’s court. In his report about his visit, Vowell writes that he

impressed upon them [the band members] that they should not attempt to interfere with the lawful rights of others, whiteman or Indian, and that at present the only land they could claim was that lawfully reserved for them.<sup>100</sup>

Vowell goes on to acknowledge that any other meadow lands used by the Band could be set aside as reserves, and that there would not be any difficulties in convincing the province. However, what stands out to the majority of the panel is Vowell’s impression that the Band was interfering with Wright’s lawful right to the meadow. Even though Vowell’s report contains the background to the meadow, including the Band’s labour in creating the meadow, he still concluded that the Band interfered with Wright’s use of the meadow. Essentially, Vowell dismissed the possibility that

---

<sup>98</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245 at 294.

<sup>99</sup> Gomer Johns, Indian Agent, Williams Lake Agency to [unidentified recipient], September 21, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p .12).

<sup>100</sup> A.W. Vowell, Indian Superintendent, Indian Office, Dept. of Indian Affairs, Victoria, BC, to Deputy Superintendent General, August 6, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 35).

Wright had interfered with the Band's use of the meadow, and disturbed the Band's possible rights to the meadow.

In the view of the majority, all the elements to cancel the pre-emption and allow the Esketemc to retain the meadow were present. Even before Vowell visited the area, the Crown could have purchased the pre-emption from Wright for \$250.00. The majority of the panel believes that Wright's offer to sell the land for \$250.00 was a turning point. If the Crown obtained the land for \$250.00 and set it aside for the Band, the entire course of history would have been changed. The failure to purchase the land at this point was a breach of the Crown's fiduciary duty. This was a case where the First Nation had a demonstrated need for the hayland, created the meadow, and was actively harvesting the hay when the land was pre-empted by Wright. The Crown's duty to balance the interests between the First Nation and Wright was made simpler when Wright offered to sell the land. By failing to acquire the meadow for the First Nation, the Crown failed to act with loyalty, good faith, full disclosure appropriate to the subject matter, and with "ordinary" diligence in what it reasonably regarded as the best interest of the beneficiaries.

A second opportunity arose when Vowell visited the area. The province willingly delayed issuing the pre-emption record and awaited direction from O'Reilly and Vowell. However, Vowell assumed that the Band had interfered with Wright's pre-emption instead of realizing that Wright had interfered with the Band's use of the meadow. As the province was willing to not grant the application, it seems that all Vowell had to do was indicate that the meadow was going to be set aside for the Band. However, Vowell prioritized Wright's pre-emption over the Band's use of the land. The majority views Vowell's failure to acknowledge Wright's pre-emption as interfering with the Band's use of land as a breach of basic fiduciary duty. This action was not an act of loyalty, good faith, full disclosure appropriate to the subject matter, nor was it in the best interests of the Band or an act of ordinary diligence. The majority of the panel thus concludes that the Crown breached its fiduciary duty to the Band with respect to the meadow.

### **REASONS OF COMMISSIONER DICKSON-GILMORE**

I am in agreement with my colleagues on the first issue, and thus share their finding that the Esketemc First Nation's ancestors, the Alkali Lake Band, did possess a cognizable interest in the lands which were pre-empted by William Wright in 1893. Having made this finding, our determination on issue 2 becomes obvious, for if there is such an interest in the lands, there arises a concomitant duty on the part of the federal Crown to protect that interest commensurate with the pre-reserve-creation obligations enumerated in *Weweykum*. I am also in agreement with this finding.

Where our views diverge, however, is with regard to the third and fourth issues, which require the panel to make findings concerning the Crown's discharge of the duty determined in issue 2, and, from this, whether the Crown breached its lawful obligations to the Esketemc First Nation consistent with the terms of the Specific Claims Policy. As I am in agreement with the majority on issues 1 and 2, I will not revisit those issues here. Rather, I will focus on issues 3 and 4 which will be dealt with in a single analysis.

### **Was There a Breach of Lawful Obligations?**

Did the federal Crown fulfill its duty to protect the Band's interest, or were lawful obligations breached? As noted above, the fiduciary duty which fell upon the federal Crown to protect the Esketemc Band's interest in the pre-empted lands was that described in *Wewaykum*, and articulated in the majority analysis, as requiring "basic obligations of loyalty, good faith in the discharge of its mandate, providing full disclosure appropriate to the subject matter, and acting with ordinary prudence with a view to the best interest of the aboriginal beneficiaries."<sup>101</sup> Because we are dealing in what is technically a pre-reserve-creation context, the duty is less than that accorded in a post-reserve-creation context but is nonetheless of a very high order. Determination of whether that duty was met requires an assessment of whether the federal Crown's actions and behaviour, as expressed through their representatives, were characterized by loyalty, good faith, full disclosure, and prudence.

In making that assessment in this case, there are some important contextual matters which must be taken into consideration. The first concerns the nature of the reserve-creation process in

---

<sup>101</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245 at 289–90.

British Columbia, a period which lasted from 1878 to 1938.<sup>102</sup> At this juncture, reserve creation in British Columbia was a joint process which required the cooperation of both the dominion and the provincial Crown. Cooperation was imperative because, “while the federal government had jurisdiction over ‘Indians and lands reserved for Indians’ under s. 91(24) of the *Constitution Act, 1867*, Crown lands in British Columbia, on which any reserve would have to be established, were retained as provincial property”.<sup>103</sup> Neither government could act independently of the other to create reserves; the federal government had no power to establish a reserve on public lands of the province, and the province was barred from reserve creation under the *Indian Act* as such action was *ultra vires* its constitutional powers.

In the pre-reserve-creation context, lands were which provincial property remained within the control of the province. Given this fact, where the provincial government wished to pass some of those properties to newcomers to encourage settlement of the province, it was free to do so, restrained only by its respect for its own provincial legislation pertaining to pre-emptions and grants. Not that such restrictions proved unduly constraining on the provincial Crown which, notwithstanding the prohibition against the taking of “Indian settlement lands” within pre-emption policies, issued grants to settlers over lands contained within “temporary reserves” and, in some cases, clearly within areas that showed signs of settlement by First Nations peoples. In such circumstances, the federal Crown, with responsibility for “Indians and lands reserved for Indians,” had an obligation to intervene on behalf of First Nations whose lands, albeit not yet reserved, had been pre-empted. However, the Crown’s rights in regard to Indians could not trump the province’s rights in regard to lands deemed provincial property, and, in situations where Indians claimed lands pre-empted or granted under provincial law, the federal Crown had no power beyond that of persuasion and argument to challenge such pre-emptions and grants. The processes of reserve creation and settlement were thus often fraught as between the two Crowns, but one thing was clear: where the province had registered a pre-emption or issued a grant for lands, the federal Crown had

---

<sup>102</sup> As was discussed in the majority report, the reserve-creation period in British Columbia did not conclude until 1938, with the passing of Order in Council 1036, whereby the province conveyed all reserved lands to the dominion to be held for the use of Aboriginal people.

<sup>103</sup> *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245 at 289–90.



no power to cancel those, and, unless the province was willing to do so,<sup>104</sup> or the pre-emptor was willing to give up the pre-emption, the federal Crown was without recourse. It is imperative that the analysis of the efforts made by the federal Crown to respect its obligations to the Alkali Lake Band and its interest in Wright's Meadow, be framed within this context.

As outlined in the majority report, a reserve was first surveyed for the Alkali Lake Band in 1861 (IR 1, 40 acres).<sup>105</sup> In 1881, Indian Reserve Commissioner Peter O'Reilly met and consulted with the Alkali Lake Indians on the allocation of additional reserves, leading to the expansion of IR 1 by 550 acres and the setting aside of six additional reserves and two fishing stations, "amounting in all to about 3310 acres [plus 3 acres at IR 7], and this embraces all the good land in the neighborhood, not already alienated."<sup>106</sup> It is important to recognize that, although the area of Wright's Meadow was centrally located within the reserves selected by the Indians, there is no evidence that the Alkali Lake Band requested that area be reserved in 1881. It has been suggested that this may well have been due to the possibility that, at that time, the lake had yet to be drained and thus the meadow was not yet formed and the lands less desirable. While it is purely speculative, given the absence of evidence on the matter, it is nonetheless curious that in a region as arid as this one, a centrally located lake would not be considered a valuable commodity, especially one which was surrounded by five of the Band's reserves.

The challenges of the larger context of reserve creation are evident in the very first moments of that process. O'Reilly reported some difficulty in locating additional desirable lands, as much of the region's best lands were occupied by white settlers who, he lamented, had long "since obtained

---

<sup>104</sup> An example of this situation is found in one of the two fishing stations reserved by O'Reilly in 1881. The lands had been pre-empted and granted some time previously; however, the Alkali Lake Band had continued to use the station without apparent complaint or interference from the pre-emptor. O'Reilly was confident that the pre-emption would not interfere with the reserve-creation process, as he was "led to believe that he [the present owner] will offer no objection to the land being set apart for the Indians; it possesses little or no value except as an Indian fishing station." P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, pp. 150-51 (ICC Exhibit 1c, pp. 19-20).

<sup>105</sup> Indian Claims Commission, *Esketemc First Nation: Indian Reserves 15, 17, and 18 Inquiry* (Ottawa, November 2001), reported (2002) 15 ICCP 50.

<sup>106</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, p. 144 (ICC Exhibit 1c, p. 12).

Crown Grants from the Provincial Government, therefore it was not in my power to interfere with their titles.”<sup>107</sup> That said, the Band seems at this juncture to have been content with the allotment of reserves, which it later referred to as containing “quite a lot of land.”<sup>108</sup>

The pre-emption which is central to this inquiry transpired on July 8, 1893, when William Harrison Wright applied to pre-empt 320 acres of Tselute, including and especially the haylands of Wright’s Meadow.<sup>109</sup> Wright was granted his pre-emption by Lands Commissioner and Provincial Government Agent F. Soues immediately upon application.

While the evidence is unclear and contradictory on the matter, there are indications that, between two and five years before the pre-emption application, members of the Esketemc Band had created the haylands by destroying a beaver dam and draining the lake which had previously filled the meadow. Although there is no evidence that the Band expressed any interest in the meadow prior to Wright’s successful application for pre-emption, there is abundant evidence confirming that, once the Band complained to Indian Agent Laing-Meason about the pre-emption, he was quick to offer what support he could. Recognizing that the federal Crown had no power to cancel the pre-emption, and cautioning that he had “often told them [the band] that they have no right to any lands outside of their reserves and that I have no power to give them authority to occupy any such,”<sup>110</sup> Laing-Meason nonetheless contacted Indian Superintendent Vowell to pass on the Band’s complaints and advocate for their interest in the meadow:

When Mr. O’Reilly laid out the Alkali Lake Reserve very few meadows were asked for, as only those Indians who had cattle required hay; no sleighs or waggons being then used by the Indians and there being a sufficiency of grass in the immediate neighborhood of the Reserve for their saddle horses; at present the [natural] grass has

---

<sup>107</sup> P. O’Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, pp.143–44, 148–49 (ICC Exhibit 1c, pp. 11–12, 16–17).

<sup>108</sup> Chief August to Vowell, October 26, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 14–15).

<sup>109</sup> Application to Record (under the *Land Act, 1884*, ss. 7 and 8) by W. H. Wright, July 8, 1893, BCA, GR 1440, F. 2319/93 (ICC Exhibit 1b, pp. 2–3); Certificate of Pre-emption Record, July 8, 1893, BCA 8319/93 (ICC Exhibit 1b, pp. 4–5).

<sup>110</sup> William Laing-Meason, Indian Agent, Williams Lake Agency, Lesser Dog Creek, BC, to A.W. Vowell, Indian Superintendent, Victoria, BC, July 16, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 3–4).

all been fed off everywhere, and hay is absolutely necessary even for saddle horses, but every Indian family now has its sleigh and Span of horses the latter being stabled during the winter and of course requiring hay; it therefore becomes most desirable and a simple of act of justice, that they be allowed to acquire more meadow land; the resident settlers of this neighborhood have hitherto [practically] respected the squatters rights of the Indians to Meadows, [never] attempting to [pre-empt] or purchase such lands [where] utilized by the Indians.

The meadow in question was until last year a Lake, this being drained has become a meadow, which was cut by these Indians for the first time last year – they have since erected fencing and buildings and were preparing to cut their hay this summer when Mr. Wright pre-empted it; under these circumstances *I beg to submit for your consideration the possibility of effecting some arrangement with the Provincial Government whereby the Meadow could be secured to the Indians and thus avoid what appears at present a matter likely to cause serious trouble. [Emphasis added.]*<sup>111</sup>

The Agent continued to correspond with Vowell regarding the pre-emption in a July 22, 1893, letter,<sup>112</sup> and his efforts were continued by his successor, Gomer Johns, who journeyed to the meadow in the late summer of the same year to inspect the pre-empted lands and speak with both the Esketemc Band and Wright. He reported to Vowell that “after hearing both parties I told the Indians that Wright was legally entitled to his pre-emption.”<sup>113</sup> Notwithstanding this, Johns asserted that Wright seemed amenable to giving up his pre-emption, and

I had strong hopes of an amicable settlement being effected. On the 13th. of August Mr. Wright gave me his terms, viz:- he would take \$250.00 or would [g]ive \$200.00, *this was subsequently communicated to the Indians but they were determined to listen to no terms that would deprive them of the meadow; they secured the hay crop and are still in possession...*

...

---

<sup>111</sup> William Laing-Meason, Indian Agent, to A. W. Vowell, Indian Superintendent, Victoria, BC, July 19, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 5–6).

<sup>112</sup> William Laing-Meason, Indian Agent, Williams Lake Indian Agency, Lesser Dog Creek, BC, to A.W. Vowell, Indian Superintendent, Victoria, BC, July 22, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 7).

<sup>113</sup> Gomer Johns, Indian Agent, Williams Lake Agency, 150 Mile House, to unidentified recipient, September 21, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 11).

*I trust that some way may be found of securing the meadow to the Indians; the man Wright could not have expected to obtain peaceable possession of the meadow under the circumstances I have stated. [Emphasis added.]*<sup>114</sup>

Notwithstanding these efforts, Chief August in August wrote directly to Vowell, complaining that, although he had raised the matter with Johns, there had “been nothing done in regard to it” and that “there is over 200 people in my reserve and it will starve all of us if we do not be allowed to keep those meadows so please come and settle this trouble for us.”<sup>115</sup> Response to this letter was swift, and Johns was sent in once again to investigate the pre-emption and assess the quality of those haylands within the reserve. Acknowledging that those haylands contained within the reserve were significant, and that the most abundant haylands were those of the meadow, Johns also observed that

*the assertion in Chief August’s letter that his band of 200 people will starve if they lose this meadow is, of course, nonsense, but it will certainly be a very serious loss to them; apart from the loss of the meadow itself, the disturbance caused by the intrusion of a white settler on a range practically enclosed by these 5 reserves will be a continual source of annoyance, besides the loss of the pasturage of which hitherto they have had a monopoly ... [Emphasis added.]*<sup>116</sup>

Johns had also clearly been in contact with provincial agents regarding the pre-emption, and informed Vowell that he may have found a loophole in Wright’s grant, insofar as he “has never entered into occupation of the land as required by Clause 13 of the Land Act.”<sup>117</sup> The record is not clear on whether anything ever came of this situation.

---

<sup>114</sup> Gomer Johns, Indian Agent, Williams Lake Agency, 150 Mile House, to unidentified recipient, September 21, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp.12–13 ).

<sup>115</sup> Chief August to Vowell, October 26, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 14–15).

<sup>116</sup> Gomer Johns, Indian Agent, Williams Lake Indian Agency, 150 Mile House, BC, to A.W. Vowell, Indian Superintendent, Victoria, BC, November 17, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 16–20).

<sup>117</sup> Gomer Johns, Indian Agent, Williams Lake Indian Agency, 150 Mile House, BC, to A.W. Vowell, Indian Superintendent, Victoria, BC, November 17, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 20–21).

The province, however, did not appear terribly sympathetic to the situation faced by the Esketemc Band or the ongoing efforts of the federal Crown to advocate for them. In an exchange of correspondence between provincial Attorney General Theodore Davie and Government Agent Soues between November 1893 and January 1894, Soues stressed that

I know of no reason why Mr. Wright should not be confirmed in his settlement on the pre-emption.

I presume the Indian Commissioner in laying off the Indian Reserves was satisfied that the Alkali Lake Indians had a sufficient Reserve and with this meadow so close to the line of their Reserve, and the Indians' knowledge of the distance of the meadow, that if they had applied for it then, it is more than probable that the Commissioner would have granted that also. As the matter stands, Mr. Wright pre-empted Crown lands unoccupied and unreserved ...<sup>118</sup>

Faced with such provincial recalcitrance, there was little the federal Crown could do. The Band, however, sought assistance through a new route. They contacted the Reverend Father Lejacq of St Joseph's Mission at Williams Lake and requested his assistance in dealing with the province. Lejacq wrote to Davie, asserting that the Band had made improvements to the pre-empted lands at the direction of Indian Reserve Commissioner O'Reilly, who had reportedly sent them out to find and develop additional haylands.<sup>119</sup> Upon receipt of this letter, Davie requested that Government Agent Soues delay the issuance of Wright's pre-emption so that the allegations contained in the missionary's letter could be investigated.<sup>120</sup> Soues acknowledged that Lejacq's letter certainly cast

---

<sup>118</sup> F. Soues, Government House, Clinton, BC, to Theodore Davie, Attorney General, Victoria, January 18, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, pp. 44–45).

<sup>119</sup> Lejacq wrote that O'Reilly "told them to look round and try to find some good place for making hay, to take what they would find, to fix it and the Government would grant it to them. Now the Indians Acting according to the suggestion of the Commissioner, located a place, a swampy place, at the head of this creek drained it, cut the brush, put fences, built stables, even houses, in a word, made a good meadow out of a useless swamp and now when they are beginning to reap the fruits of their hard labour, a white man comes and wants to snatch it from their hands." J.M.J. Lejacq, OMI, St Joseph's Mission, Williams Lake, to unidentified recipient, January 18, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, p. 46).

<sup>120</sup> Theodore Davie, Victoria, BC, to [F. Soues], Government Agent, Clinton, BC, January 26, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, p. 49).

a new light on things, and suggested that the matter be referred back to O'Reilly for clarification.<sup>121</sup> Davie was clear that, should it become apparent that Wright obtained the pre-emption under false pretenses, action would be taken.

O'Reilly replied promptly and clearly to queries from Davie about the reserve allocation process and, specifically, the Wright's Meadow situation, in early February 1894. His comments indicate that, as represented by Father Lejacq, there was some misunderstanding on the part of the Esketemc regarding the securing of additional haylands. It also appears that there was some ambivalence on the part of the Band about the Wright's Meadow both in 1881 and after:

The Reserve Commission visited Alkali Lake in July 1881 ...

...

The Indians were naturally anxious to possess as much hay land as possible, and every acre pointed out by them that had not already been alienated was secured to them. I also invited them to shew [sic] me any other plots of land they were in the habit of using, had they done so, it would have been included in the reserves. I certainly did not in any way encourage them to occupy and improve land outside of their reserves as such advice would have been entirely opposed to my instructions.

It is much to be regretted that the Indians should have improved the land now taken possession of by Mr. Wright under a record of preemption, but it is strange that since 1881 to the present time no intimation has reached me either from the Indians, or from their Agent that this meadow was so highly prized by them; and no request has been made to me to have it declared a reserve, notwithstanding that I have since then, on several occasions passed through that part of the country.

If there are any other meadows, not legally held by whites, where the Alkali Lake Indians are in the habit of cutting hay, besides that preempted by Mr. Wright they may yet be secured to their use. In that event I would suggest that the Government Agent of the district be instructed not to accept for the present any further applications to preempt. [Emphasis added.]<sup>122</sup>

---

<sup>121</sup> F. Soues, Clinton, BC, to Theodore Davie, Attorney General, Victoria, BC, January 29, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit, 1c, pp. 51–52).

<sup>122</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Theo. Davie, Attorney General, Victoria, BC, February 7, 1894, LAC, RG 10, vol. 1278, pp. 298–300 (ICC Exhibit 1a, pp. 22–24).

The dispute over the meadow continued over 1894, and, in July, Indian Agent Bell, Johns' successor, asked Indian Superintendent Vowell to visit the meadow personally to settle the dispute.<sup>123</sup> On the same day, Government Agent F. Soues also asked Vowell to visit the meadow to give "executive attention" to the matter.<sup>124</sup> Vowell did so on July 23, 1894, and reported back to the Deputy Superintendent General of Indian Affairs on August 6, 1894, detailing the Band's use of the Wright's Meadow haylands and any improvements made thereon.<sup>125</sup> He observed:

They were not unreasonable, but still kept strongly to the point that without the meadows they and their children would be without sufficient means for their support. *For my own part I consider that their demands are worthy of consideration and I would strongly urge that all these patches of meadow lands situated in the mountains which have for years been used by them and which come under the head of "waste lands of the Crown" be reserved to them without delay ...* [Emphasis added.]<sup>126</sup>

In apparent support of Vowell's observations and recommendations, the Deputy Superintendent General wrote to Vowell 10 days later and instructed him that

if the Indians manage to induce Mr. Wright to relinquish his claim you should, without delay, approach the Provincial authorities, through the Reserve Commissioners if necessary, and endeavour to get them to secure the land to the Indians, or *failing that, ask them to apportion some others in lieu of the meadow, and*

---

<sup>123</sup> E. Bell, Williams Lake Agency, Clinton, BC, to A.W. Vowel, July 2, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 30).

<sup>124</sup> F. Soues, Government Agent, Government Office, Clinton, BC, to A. Campbell Reddie, Deputy Provincial Secretary, Victoria, July 2, 1894, Provincial Collection, binder 12, corr. no. 996/94 (ICC Exhibit 1c, p. 55).

<sup>125</sup> Purportedly attached to the reverse of this letter is a 'draft letter' whose author and recipient are unknown, and which has been attributed to 'F. Soues', Government Agent, Government Office, Clinton, B.C. In this document, there is a direction to cancel Wright's pre-emption of the meadow based on his wrongful declaration that the lands were not 'Indian settlement lands'. While this draft document would seem important, there is no evidence to indicate that it was anything other than a draft, nor is there any clarity around its status, authorship or intended recipient. There is nothing else in the record to suggest its contents were in any way official or that it ever transcended draft form and was actually sent to the federal government, Wright, the Band or any other interested party. Given its uncertain status and role in the controversy over the meadow, its probative value is limited.

<sup>126</sup> A.W. Vowell, Indian Superintendent, Indian Office, Department of Indian Affairs, Victoria, BC, to Deputy Superintendent General, August 6, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 34-37).

*also reserve to the Indians any other hay lands used by them, and considered by you really necessary for the support of their stock. [Emphasis added.]*<sup>127</sup>

In the fall of 1894, both federal<sup>128</sup> and provincial<sup>129</sup> representatives visited Wright's Meadow and attempted to assess its importance as a hayland as well as the extent of any improvements made by the Esketemc Band to the region. Their reports are substantially similar and document limited improvements by the Band and none by Wright, who had not occupied the meadow for any significant period owing to the pre-emption controversy. Both reports also commented on the presence of other viable haylands outside the pre-empted lands.<sup>130</sup>

Apparently unable to successfully challenge the pre-emption, in 1895 the federal Crown took measures to provide additional haylands elsewhere. In that year, Indian Reserve Commissioner O'Reilly once again visited the Esketemc and allotted an additional seven reserves, most of which were either haylands or amenable to development as haylands:

Though these Indians are already in possession of reserves allotted to them in 1881, and which contain 5587 [*sic*] acres,<sup>131</sup> they have recently complained of a scarcity of hayland as their bands of cattle, and horses have largely increased, and it was with a view to supplying this want that my present visit to Alkali lake was undertaken.

The Chief "August" and a large number of his people accompanied me to point out the several pieces of land which they desired to have secured to them; Mr. Agent Bell also was present, and assisted much in the selection of the seven following locations.

...

The meadow lands in all the above reserves are capable of being enlarged by clearing, with a very small amount of labor; the Indians at present only using those

---

<sup>127</sup> Deputy Superintendent General of Indian Affairs to A.W. Vowell, Indian Superintendent, Victoria, BC, August 16, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 39).

<sup>128</sup> [Bell, Indian Agent], to A.W. Vowell, October 16, 1894, LAC, RG 10, vol. 11014, p. 47A (ICC Exhibit 1a, p. 51).

<sup>129</sup> C. Phair, Acting Government Agent, Government office, Clinton, BC, to W.S. Gore, Deputy Commissioner of Lands and Works, Victoria, BC, October 16, 1894, LAC, RG 10, vol. 11014, pp. 51A–51B (ICC Exhibit 1a, pp. 49–50).

<sup>130</sup> See Appendix A, Historical Background, pp. 76–77.

<sup>131</sup> This should read 3,587 acres.



portions that are naturally free of brush. They are at too great an altitude to admit of their being used for any other purpose.<sup>132</sup>

One of the reserves set aside by O'Reilly in 1895 is IR 11A, also known as "Sampson's Meadow," which is located immediately west of Wright's Meadow.

Although we acknowledge that the federal Crown's powers to influence the pre-emption were limited, it is nonetheless clear that considerable efforts were undertaken by the successive Indian Agents, by Vowell, and by O'Reilly to see justice done to the Esketemc regarding the meadowlands. The complaints of the Band, over lands which it did not express any interest in possessing as reserve lands save for at the time of the pre-emption, were made known to the department and were championed thereby with the provincial government. It is clear that both Crowns made considerable effort to resolve the matter on the Band's behalf, launching three different investigations and ensuring that the pre-emptor, Wright, remained off the meadow while the controversy was active. Thus, although the meadow had been the subject of a legal pre-emption, the restriction of the pre-emptor from occupying the lands and the apparent respect of the "squatters' rights" of the Band in the meadow indicate that the practical implications of the pre-emption were, until relatively recently, moot.

In the end, when both the province and the pre-emptor proved unmovable on the matter of the meadow, the federal Crown took immediate steps to allocate additional haylands to the Band. And although it is not clear from the evidence whether the quantity of hay available from the additional seven haylands reserved in 1895 rivalled that produced in Wright's Meadow, there is also no evidence indicating that the band members were in any way dissatisfied with this compensation, nor is there any continued expression of a desire to obtain the pre-empted meadow. Indeed, it is noteworthy that, aside from those complaints recorded in the two years spanning the time of the pre-emption in 1893 to the allocation of the additional reserves in 1895, there is no evidence of any expression of concern about Wright's Meadow by the Band until the present and the laying of a claim to it.

---

<sup>132</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Deputy Superintendent General of Indian Affairs, September 26, 1895, LAC, RG 10, vol 1279, pp. 74-75; Federal Collection, vol. 14, pp. 117-25 (ICC Exhibit 1c, pp. 66-69).

Furthermore, while the evidence around Wright's offer to sell his pre-emption for \$250.00 is limited and unclear, it is recorded that the band was "*determined to listen to no terms that would deprive them of the meadow.*"<sup>133</sup> Faced with a pre-emptor who was, save for this offer briefly made and apparently cajoled from Wright in discussions with the Indian Agent Johns, averse to selling, a province that saw the pre-emption as legal and valid, and a federal Crown that was powerless to cancel the pre-emption, it is difficult to see what more the federal Crown could have done to challenge Wright's hold on the meadow. And although it certainly was not legally necessary for the federal Crown to provide additional haylands to a Band already in possession of "quite a lot of land,"<sup>134</sup> it allocated a further seven reserves.

Based upon this understanding of the history of the federal Crown's actions in reserve creation for the Esketemc First Nation, and particularly with reference to the pre-emption of Wright's Meadow, I am of the opinion that its actions demonstrated loyalty, good faith, full disclosure, and prudence. I thus find that the federal Crown discharged its duty to the Esketemc people with regard to Wright's Meadow, and absolve them of any outstanding lawful obligation in this regard.

#### **ISSUE 4: FURTHER BREACHES OF THE SPECIFIC CLAIMS POLICY**

#### **4 In all the circumstances, did the federal Crown breach any lawful obligation to the Band, as specified in the Specific Claims Policy?**

As the majority of the panel has concluded that the Crown has failed to fulfill its fiduciary obligations to the Esketemc First Nation, an examination of this issue is not required.

---

<sup>133</sup> Gomer Johns, Indian Agent, Williams Lake Agency, 150 Mile House, to unidentified recipient, September 21, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp.12-13).

<sup>134</sup> Chief August to Vowell, October 26, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 14-15).

**PART V**  
**CONCLUSIONS AND RECOMMENDATIONS**

**Issue 1      Did the Alkali Lake Band, as it was then known, have an interest in the lands that William H. Wright pre-empted in 1893?**

The panel concludes that the Alkali Lake Band, as it was then known, had an interest in the meadow that Wright pre-empted in 1893. In reaching this conclusion, the panel acknowledges that this interest can be based on a cognizable interest of demonstrated use, which constitutes Indian settlement lands.

**Issue 2      If the Band had an interest in the lands, did the federal Crown have a duty to protect that interest?**

**Issue 3      If the federal Crown had a duty to protect the Band's interest, did it discharge that duty?**

As these two issues are related, the panel decided to deal with these issues concurrently in the same section. The opinion of the panel diverges on the issue of finding a breach of fiduciary duty. The panel agrees in finding that a fiduciary duty exists in relation to the meadow, but disagrees on whether that duty has been breached, the majority of the panel finding that it has been breached and the minority finding that it has not.

**Issue 4      In all the circumstances, did the federal Crown breach any lawful obligation to the Band, as specified in the Specific Claims Policy?**

As the focus of the analysis has been on the fiduciary duty and the majority has found a breach of fiduciary duty, it is not necessary for this issue to be addressed.

**RECOMMENDATIONS**

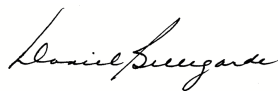
Commissioners Bellegarde and Holman recommend:

**That the claim of the Esketemc First Nation for the lands comprising Wright's Meadow be accepted for negotiation under Canada's Specific Claims Policy.**

Commissioner Dickson-Gilmore recommends:

**That the claim of the Esketeme First Nation for the lands comprising Wright's Meadow not be accepted for negotiation under Canada's Specific Claims Policy.**

**FOR THE INDIAN CLAIMS COMMISSION**



Daniel J. Bellegarde (Chair)  
Commissioner



Jane Dickson-Gilmore  
Commissioner



Alan C. Holman  
Commissioner

Dated this 24th day of June, 2008.

**APPENDIX A**

**HISTORICAL BACKGROUND**

**ESKETEMC FIRST NATION**

**WRIGHT'S MEADOW PRE-EMPTION INQUIRY**

**Indian Claims Commission**



## CONTENTS

INTRODUCTION	57
THE GOLD RUSH AND THE DEVELOPMENT OF PRE-EMPTION POLICY IN BRITISH COLUMBIA	58
<i>LAND ACT, 1884</i>	59
WHAT IS AN INDIAN SETTLEMENT?	61
RESERVE ALLOTMENTS AT ALKALI LAKE, 1881	63
THE PRE-EMPTION	64
THE MEADOW	66
WILLIAM WRIGHT AND INDIAN AGENT WILLIAM LAING-MEASON	70
Why Was Lot 323 Pre-empted by William Wright?	71
IMPROVEMENTS: EVIDENCE OF AN INDIAN SETTLEMENT AND OCCUPATION?	73
Pithouse	75
FIRST NATION'S USE OF THE MEADOW	78
GOVERNMENT RESPONSE: THE SPECIFICS OF THE CONFLICT	81
RESERVE ALLOTMENTS AT ALKALI LAKE, 1895	91
CROWN GRANT OF LOT 323, 1899	91
THE MEADOW POST-CROWN GRANT	92





## INTRODUCTION

The Esketemc First Nation,<sup>1</sup> descended from the Secwepemc people (otherwise known as the Shuswap), make their home on Alkali Lake Creek, a tributary of the Fraser River, in central British Columbia. The salmon fishery was once the main economy;<sup>2</sup> however, the Esketemc First Nation has had considerable success raising horses and cattle.<sup>3</sup>

According to Esketemc oral history, the community refers to “Wright’s Meadow” as “U.S. Meadow”<sup>4</sup> or “Tselute,” meaning “Cattail.”<sup>5</sup> At the community session, Elder Dorothy Johnson indicated on a map that the location of Tselute<sup>6</sup> began at Sampson’s Meadow (Indian Reserve [IR] 11 and IR 11A) and extended beyond Place Lake.<sup>7</sup> The Elders’ oral history indicates that Wright’s Meadow is only a small portion of Tselute.<sup>8</sup> It should be noted that Wright’s Meadow no longer exists. The construction of a dam on Place Lake has flooded it. The oral history of the community indicates that the current “dam was put in in 1953 at Tselute to hold the water on behalf of the Alkali Lake Ranch.”<sup>9</sup>

---

<sup>1</sup> The Esketemc First Nation was known as the Alkali Lake Band, or the Alkali Lake Band of Indians, during the relevant time period of this inquiry. Hereafter the terms First Nation and Esketemc First Nation will be used, except where referred to otherwise in quoted passages.

<sup>2</sup> Indian Claims Commission, *Esketemc First Nation: Indian Reserves 15, 17, and 18 Inquiry* (Ottawa, November 2001), reported (2002) 15 ICCP 3 at 19.

<sup>3</sup> P. O’Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, p. 144 (ICC, Exhibit 1c, p. 12).

<sup>4</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 82, C.Y. Wycotte; p. 129, A. Wycotte).

<sup>5</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 23, J. Roper; p. 129, A. Wycotte; p. 246, I. Johnson).

<sup>6</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 159, D. Johnson).

<sup>7</sup> Map of Esketemc First Nation Reserves with legend, prepared by V.L. Robbins, June 25, 2005, produced at community session, April 5 and 6, 2006, held at the Esketemc First Nation, Alkali Lake, BC, with markings made at community session held April 5 and 6, 2006 (ICC Exhibit 5c, p. 1).

<sup>8</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, pp. 187–90, B. Chelsea); aerial photograph of lot 323, produced at community session, April 5 and 6, 2006, held at the Esketemc First Nation, Alkali Lake, BC, with markings made at community session held April 5 and 6, 2006 (ICC Exhibit 5c, p. 1).

<sup>9</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 57, A. Chelsea).

### THE GOLD RUSH AND THE DEVELOPMENT OF PRE-EMPTION POLICY IN BRITISH COLUMBIA

In 1858, gold was discovered along the Fraser River, attracting large numbers of non-Aboriginal people into the traditional Secwepemc territory in central British Columbia, where many of them settled after the end of the gold rush.

The challenges that accompanied increasing rates of settlement were complicated by financial difficulties being experienced by the colonial government of mainland British Columbia. Fiscal constraints resulted in suspending the short-lived practice of entering into treaties with First Nations (the Douglas Treaties, 1850–54) and abandoning plans for a systematic survey of the territory.<sup>10</sup> British Columbia's predicament was this: in order to achieve its primary goal of settling the colony, it had to address First Nations' land rights while minimizing the costs of treaties or surveys. Therefore, the colony required a land policy that would allow settlers to acquire "largely unsurveyed land"<sup>11</sup> while simultaneously "protecting certain specified lands, including Government reserves, town sites and Indian settlements."<sup>12</sup>

Thus, in the late 1850s and early 1860s, the colonial government, under the leadership of newly appointed Governor James Douglas, developed a land policy that allowed a settler to claim or pre-empt up to 160 acres of unsurveyed Crown land, provided the land was not (among other restrictions) "an Indian reserve or settlement."<sup>13</sup>

Anne Seymour has summarized the colonial government's attempt to balance the system of pre-emption and the creation of Indian reserves as follows:

In securing the village sites and resource areas by establishing reserves, Douglas clearly believed he would satisfy the basic needs of the Indian communities and

---

<sup>10</sup> Indian Claims Commission, *Esketemc First Nation: Indian Reserves 15, 17, and 18 Inquiry* (Ottawa, November 2001), reported (2002) 15 ICCP 3 at 23–24.

<sup>11</sup> Anne Seymour, "Pre-emption Policies, Indian Settlements & Reserve Establishment in British Columbia, 1860–1898," prepared for Specific Claims Branch, Indian and Northern Affairs Canada, November 17, 2005, p. 1 (ICC Exhibit 3b, p. 4).

<sup>12</sup> Anne Seymour, "Pre-emption Policies, Indian Settlements & Reserve Establishment in British Columbia, 1860–1898," prepared for Specific Claims Branch, Indian and Northern Affairs Canada, November 17, 2005, p. 1 (ICC Exhibit 3b, p. 4).

<sup>13</sup> *Pre-emption Consolidation Act, 1861*, August 27, 1861, s. 3, as reprinted in RSBC 1871, App. 80.

maintain a positive relationship with the settlers. The intent of this policy was honourable. Putting it into practice proved to be more complicated than was anticipated. Not only were there issues between settlers and the First Nations populations, there were also difficulties in allocating unsurveyed land for settler use.<sup>14</sup>

### ***LAND ACT, 1884***

Although colonial land policies had been established and revised through a series of pre-Confederation land ordinances, the prohibition on pre-empting Indian reserves and settlements continued after British Columbia joined Confederation in July 1871. Most relevant to this inquiry is the *Land Act, 1884*, as consolidated and amended in *Statutes of British Columbia*, vol. 1 Consolidated Acts, 1888, c. 16, s. 77.<sup>15</sup> The sections of the *Land Act, 1884*, which deal most directly with the pre-emption of land read as follows:

3. Any person being the head of a family, a widow, or single man over the age of eighteen years, and being a British subject, or any alien, upon his making a declaration of his intention to become a British subject, ... may record any tract of unoccupied and unreserved Crown lands (not being an Indian settlement) not exceeding three hundred and twenty acres in extent ... Provided, that such right shall not be held to extend to any of the aborigines of this continent, except to such as shall have obtained permission in writing to so record by a special order of the Lieutenant-Governor in Council.

...

5. Any person desiring to pre-empt, as aforesaid, shall, if the land be unsurveyed, first place at each angle or corner of the land to be applied for a stake or post ...

...

After the land is so staked and marked, the applicant shall then make application in writing to the Commissioner of the district in which the land is situate to record such land, and in such application the applicant must enclose a full description of the land intended to be recorded, and enclose a sketch plan thereof ... the applicant shall also make ... a declaration in duplicate, in the Form No. 2 in the schedule hereto; and if the applicant shall in such declaration make any statement, knowing the same to be

---

<sup>14</sup> Anne Seymour, "Pre-emption Policies, Indian Settlements & Reserve Establishment in British Columbia, 1860–1898," prepared for Specific Claims Branch, Indian and Northern Affairs Canada, November 17, 2005, p. 6 (ICC Exhibit 3b, p. 9).

<sup>15</sup> Please note that both versions of the *Land Act* are included in the record for this claim. In the 1888 Consolidated Acts (ICC Exhibit 6b), however, the sections related to pre-emption are different than those in the *Land Act, 1884* (ICC Exhibit 6a). For the purposes of this history, the *Land Act, 1884*, will be used.

false, he shall have no right at law or in equity to the land, the record of which he may have obtained by the making of such declaration.

...

7. Every piece of such unoccupied, unsurveyed and unreserved land as aforesaid, sought to be pre-empted under the provisions of this Act, shall, save as hereinafter is provided, be of a rectangular or square shape .... and 320 acres shall measure 40 chains by 80 chains (equal to 880 yards by 1760 yards.) All lines shall be run true north and south, and true east and west.

...

10. Upon the compliance by the applicant with the provisions hereinbefore contained, and upon payment by him of the sum of two dollars to the Commissioner, the Commissioner shall record such land in his favour as a pre-emption claim and give him a certificate of such pre-emption record ...

...

23. After the grant of a certificate of improvement as aforesaid to the pre-emptor, and payment of one dollar per acre for the land has been made, a Crown grant or conveyance ... of the fee simple of and in the land mentioned as recorded in such certificate shall be executed in favour of the said pre-emptor, upon payment of the sum of five dollars ...<sup>16</sup>

In addition to the above, sections 11 to 14 of the *Land Act, 1884*, addressed terms of the pre-emptor's "possession" and occupation of the land and provisions for a pre-emptor to take leave of absence from the land with the consent of the local commissioner.<sup>17</sup>

The colonial and early post-Confederation pre-emption policies, which were essentially the same, were not without flaws. Anne Seymour noted:

The responsibility for the surveys of pre-empted land ostensibly fell to the settler pre-empting it. If a settler intended to fulfill the requirements of the act to acquire a title to the land, a survey was a requirement. But, to have settlers pay for the survey of the individual plots of land they purchased, made the correlation of surveyed and unsurveyed land difficult. ... The process relied upon the settler identifying land by geographic features and/or land held by neighbouring settlers. Such descriptions were often vague and difficult to locate. The long-held fear that vast areas could be alienated despite the provisions in the ordinances, and later the legislation, appears to have been well-founded ... With settlers being held responsible for identifying and locating land, declaring if it was used and/or occupied by another settler, the

---

<sup>16</sup> *Land Act*, RSBC 1884, c. 16, ss. 5–23 (ICC Exhibit 6a, pp. 2–4, 7).

<sup>17</sup> *Land Act*, RSBC 1884, c. 16, ss. 11–14 (ICC Exhibit 6a, pp. 4–5).

government or an Indian settlement and incurring the cost of survey, and magistrates disinclined to enforce restrictions on acquisition, the limited government presence in land administration came under some criticism ...<sup>18</sup>

Section 16 of the *Land Act, 1884*, states:

16. Any pre-emptor of unsurveyed land may have the land recorded by him surveyed at his own expense (subject, however, to a rectification of boundaries) by a surveyor approved of and acting under instructions from the Chief Commissioner of Lands and Works or Surveyor-General. The field notes (original and duplicate) and a sketch of any such survey must be forwarded to the head office of the Lands and Works Department ... and should such survey be accepted by the department, a notice thereof shall be published in the British Columbia Gazette for a period of sixty days, giving the official description of the land, also the name of the pre-emptor for whom the land was surveyed, during which period any other parties having claims to such land must file a statement of their claims thereto with the Commissioner, and unless two or more parties are claimants of the same land, the Commissioner, at the expiration of such sixty days shall record such surveyed land in the name of the pre-emptor.<sup>19</sup>

Seymour concluded:

In the absence of an official definition of an Indian settlement, the honour and integrity of the individual pre-empting land, the knowledge of the local Commissioner and the experience of surveyor remained the cornerstone of the policy.<sup>20</sup>

#### **WHAT IS AN INDIAN SETTLEMENT?**

There is no clear and absolute definition of what constitutes an “Indian Settlement” in the colonial land ordinances or in any version of the *Land Act*, including that of 1884. However, historical

---

<sup>18</sup> Anne Seymour, “Pre-emption Policies, Indian Settlements & Reserve Establishment in British Columbia, 1860–1898,” prepared for Specific Claims Branch, Indian and Northern Affairs Canada, November 17, 2005, pp. 20–21 (ICC Exhibit 3b, pp. 23–24).

<sup>19</sup> *Land Act*, RSBC 1884, c. 16, s. 16 (ICC Exhibit 6a, p. 5).

<sup>20</sup> Anne Seymour, “Pre-emption Policies, Indian Settlements & Reserve Establishment in British Columbia, 1860–1898,” prepared for Specific Claims Branch, Indian and Northern Affairs Canada, November 17, 2005, p. 21 (ICC Exhibit 3b, p. 24).

documents from colonial British Columbia indicate that some officials contemplated the meaning of the term. In 1864, when considering a pre-emption of lands at Chemainus, a panel of colonial officials considered how the term “Indian Settlement” would be defined.<sup>21</sup> The panel concluded:

We understand an Indian Settlement to be not a permanent standing Village but such a Village or Home as Indians are accustomed to have and it appears to be an understood custom with the Indians of this District as with many others to leave their Home or Villages for months together taking their Houses with them.

... [The] Land in question has always been an Indian Settlement in the Indian sense of the word, a place which the Indians looked on as their Home which they from time to time inhabited and it is conceded that no inhabited Houses actually stood on the spot when the Land was taken up.

This fact of an Indian Settlement existing on the spot is one which we think can only be decided satisfactorily by the evidence of reliable Indians of the tribe or White men who have known the spot for some years and more particularly by a careful examination of the spot itself which, to the eye of one experienced in Indian matters will, we are told, bear indisputable evidence of continued occupation and residence ...<sup>22</sup>

When considering the term in 1878, Indian Reserve Commissioner Gilbert Malcolm Sproat stated:

An “Indian Settlement” must mean, not only the soil, but, also, its natural adjunct, and what is reasonably necessary to fit it for human habitation and industry.

The same remark applies to reserves, which are simply “settlements” that have been defined by the Government. What is essentially inherent in a “settlement” cannot be removed by its transformation into a “reserve.”<sup>23</sup>

---

<sup>21</sup> Anne Seymour, “Pre-emption Policies, Indian Settlements & Reserve Establishment in British Columbia, 1860–1898,” prepared for Specific Claims Branch, Indian and Northern Affairs Canada, November 17, 2005, pp. 10–11 (ICC Exhibit 3b, pp. 13–14).

<sup>22</sup> Tho. L. Woody, Acting Attorney General, J.D. Pemberton, Surveyor General, A.W. Weston, Treasurer, to Acting Colonial Secretary, October 3, 1864, British Columbia Archives (BCA), file 909, Lands and Works Department, vol. 1, 1864 Oct. to Dec. (ICC Exhibit 1c, pp. 2–3).

<sup>23</sup> Report of [G. M. Sproat, Indian Reserve Commissioner, Indian Reserve Commission], July 20, 1878, Provincial Collection, binder 2, corr. no. 1769/78 (ICC Exhibit 1c, p. 9).

### **RESERVE ALLOTMENTS AT ALKALI LAKE, 1881**

The original village site of the Esketemc First Nation is located at the head of Alkali Lake. In 1861, a reserve of 40 acres was set apart at Alkali Lake for the use of the First Nation by A.C. Elliot, within the area that now comprises IR 1.<sup>24</sup> In July 1881, Indian Reserve Commissioner Peter O'Reilly met with the Esketemc First Nation to allot additional reserves. O'Reilly decided to enlarge IR 1 by 550 acres and to set aside six additional reserves and two fishing stations.<sup>25</sup> In his account of this visit, O'Reilly stated:

This district of country is, for the most part, barren, and destitute of water, consequently I experienced much difficulty selecting even a limited quantity of land suitable for agricultural purposes.

The best locations have for years past been occupied by white settlers, to the exclusion of the Indians, and these parties have since obtained Crown Grants from the Provincial Government, therefore it was not in my power to interfere with their titles.

...

These Indians appear to be industrious, and have shewn a desire to cultivate every possible acre of land.<sup>26</sup>

O'Reilly also noted the First Nation's need for hay lands; he reported:

The Indians of Alkali Lake possess 561 Horses, besides 123 Cattle, and 69 Sheep; their great desire was to obtain as much hay land as possible: to satisfy their just requirements it became necessary to make six (6) separate reservations, amounting in all to about 3310 acres [plus 3 acres at IR 7], and this embraces all the good land in the neighborhood, not already alienated.<sup>27</sup>

---

<sup>24</sup> Indian Claims Commission, *Esketemc First Nation: Indian Reserves 15, 17, and 18 Inquiry* (Ottawa, November 2001), reported (2002) 15 ICCP 3 at 50.

<sup>25</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, pp. 143–66 (ICC Exhibit 1c, p. 12).

<sup>26</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, pp.143–44, 148–49 (ICC Exhibit 1c, pp. 11–12, 16–17).

<sup>27</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, p. 144 (ICC Exhibit 1c, p. 12).

It is noteworthy that O'Reilly allotted to the First Nation land already held under pre-emption by a settler. O'Reilly stated:

I have also reserved for this tribe, two important fisheries; ... As I have been informed, they have never ceased to use this fishery, notwithstanding that as far back as April 1873 the land was included in a pre-emption, made by Thomas Roper, upon which he obtained a Certificate of Improvement, in December 1875. Subsequently Mr. Roper sold his interest to Mr. Felker, who at present claims to be the owner.

Mr. Felker was absent during my stay in this neighborhood, consequently I had no opportunity of seeing him. I am, however, led to believe that he will offer no objection to the land being set apart for the Indians; it possesses little or no value except as an Indian fishing station.<sup>28</sup>

These reserves were surveyed by W.S. Jemmett in 1883 and approved by the Chief Commissioner of Lands and Works in 1884.<sup>29</sup> "The Alkali Lake reserves as finally surveyed increased from the 3,313 acres proposed by O'Reilly to 3,587.5 acres."<sup>30</sup>

## THE PRE-EMPTION

On July 8, 1893, William Harrison Wright<sup>31</sup> applied for, and received, pre-emption record no. 745 for lot 323 in Lillooet District at Alkali Lake Creek.<sup>32</sup> Wright's pre-emption comprised an area of 320 acres, the maximum area allowed under the *Land Act, 1884*. Wright's application reads as follows:

---

<sup>28</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Superintendent General of Indian Affairs, November 28, 1881, Federal Collection, Minutes of Decision, correspondence & sketches, vol. 8, pp. 150–51 (ICC Exhibit 1c, pp. 19–20).

<sup>29</sup> Indian Claims Commission, *Esketemc First Nation: Indian Reserves 15, 17, and 18 Inquiry* (Ottawa, November 2001), reported (2002) 15 ICCP 3 at 51.

<sup>30</sup> Indian Claims Commission, *Esketemc First Nation: Indian Reserves 15, 17, and 18 Inquiry* (Ottawa, November 2001), reported (2002) 15 ICCP 3 at 51.

<sup>31</sup> William Wright was sometimes referred to as *Semah*, meaning "non-Native," by members of the Esketemc First Nation. ICC Transcript, July 5, 2006 (ICC Exhibit 5a, p. 266, I. Johnson).

<sup>32</sup> Application to Record (under the *Land Act, 1884*, ss. 7 and 8) by W.H. Wright, July 8, 1893, BCA, GR 1440, F. 2319/93 (ICC Exhibit 1b, pp. 2–3); Certificate of pre-emption record, July 8, 1893, BCA, [8319/93] (ICC Exhibit 1b, pp. 4–5).



I have the honour to request that you will record my name, as a Pre-emptor, under the "Land Land," [sic] *Three hundred and twenty acres of unoccupied and unreserved Crown land, within the meaning of the "Land Act", in the District of Lillooet.*

The claim is described as follows, and is more particularly shewn on the sketch map drawn on the back of this application, viz: – *about 2 1/2 miles West of Indian Reserve commencing at a stake situated on the North West corner and marked A. Thence running South eighty chains to a point marked B. Thence east forty chains to a point marked C. Thence North eighty chains to a point marked D. Thence west forty chains to starting point.*<sup>33</sup>

According to the *Land Act, 1884*, Wright was required to declare that his pre-emption did not interfere with the prior use or settlement of a First Nation:

*I W.H. Wright of Alkali Lake, do solemnly and sincerely declare that the land for the record of which I have made application, dated the 21st day of June, 1893, is unoccupied and unreserved Crown land, within the meaning of the "Land Act," and is not an Indian Settlement, or any portion thereof; that I have staked off and marked such land in accordance with the provisions of the "Land Act;" that my application to record is not made in trust for, on behalf of, or in collusion with, any other person or persons, but honestly [on] my own behalf for settlement and occupation; and I also declare that I am duly qualified under the said Act to record the said land; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the "Oaths Ordinance, 1869."*<sup>34</sup>

Wright's declaration was dated July 8, 1893, and was sworn before Lands Commissioner F. Soues, who also acted as Provincial Government Agent and granted Wright his pre-emption record on July 8, 1893.<sup>35</sup>

---

<sup>33</sup> Application to Record (under the *Land Act, 1884*, ss. 7 and 8) by W.H. Wright, July 8, 1893, BCA, GR 1440, F. 2319/93 (ICC Exhibit 1b, pp. 2–3). Note: Portions shown in italics are handwritten. The remainder of the form is pre-printed.

<sup>34</sup> Declaration (form 2, required under the *Land Act, 1884*, ss. 7 and 8), William H. Wright, July 8, 1893 BCA, 32319/93 (ICC Exhibit 1b, p. 1). Note: Portions shown in italics are handwritten. The remainder of the form is preprinted.

<sup>35</sup> Declaration, William H. Wright, July 8, 1893 BCA, 32319/93 (ICC Exhibit 1b, p. 1).

## THE MEADOW

Eight days after Wright received his pre-emption, Williams Lake Indian Agent William Laing-Meason wrote to Indian Superintendent A.W. Vowell informing him of the pre-emption. Laing-Meason outlined the Esketemc First Nation's relationship to the meadow and its response to Wright's pre-emption, stating:

Some Indians of the Alkali Lake Band have squatted this past Spring on a meadow of wild grass for the purpose of cutting the same for hay – the meadow is situated about five miles from the reserve – they cut a little hay upon it last year. A person named William Wright, a whiteman [*sic*], has just preempted [*sic*] the meadow and informed me on the 15th. that one of the Indians above mentioned, named August, (the second chief of the Alkali Band) had threatened to kill him – Wm. Wright – if he took possession of the meadow as they claimed it as their own. ... the Indians have not yet come to see me about the matter – as I have often told them that they have no right to any lands outside of their reserves and that I have no power to give them authority to occupy any such ...<sup>36</sup>

Esketemc oral history relates events similar to the documentary accounts of the confrontation between William Wright and the Esketemc First Nation, including accounts of the community confronting Wright and physically removing him from the pre-emption area.<sup>37</sup> Elder Willard Dick stated that “[t]he Indians hauled him away out of there.”<sup>38</sup>

With respect to Laing-Meason's comment regarding his powers as Indian Agent, a memorandum from Superintendent A.W. Vowell (of unknown date), entitled “Instructions to Indian Agents,” informed the recipients as follows:

The duties of Agents mainly consist in advising the Indians, and in protecting them in the possession of their farming, grazing and woodlands, fisheries or other rights, and preventing trespass upon or interference with the same.

...

---

<sup>36</sup> William Laing-Meason, Indian Agent, Williams Lake Agency, Lesser Dog Creek, BC, to A.W. Vowell, Indian Superintendent, Victoria, BC, July 16, 1893, Library and Archives Canada (LAC), RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 3–4 ).

<sup>37</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 51, A. Chelsea; pp. 133, 147, 149, W. Dick); ICC Transcript, July 5, 2006 (ICC Exhibit 5a, pp. 264, 266–67, I. Johnson).

<sup>38</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 149, W. Dick).

The Agent should constantly advise and instruct the Indian in the beneficial use and occupations of their farming, grazing and woodland, fisheries or other privileges or industries possessed or pursued by them; and they, the Agents, should take measures to prevent trespass or intrusion by white people or Indians of other tribes or bands on the reserves, fisheries, etc., within their Agencies, etc.<sup>39</sup>

On July 19, 1893, Indian Agent Laing-Meason wrote again to Indian Superintendent Vowell elaborating on the situation:

When Mr. O'Reilly laid out the Alkali Lake Reserve very few meadows were asked for, as only those Indians who had cattle required hay; no sleighs or waggons being then used by the Indians and there being a sufficiency of grass in the immediate neighborhood of the Reserve for their saddle horses; at present the [natural] grass has all been fed off everywhere, and hay is absolutely necessary even for saddle horses, but every Indian family now has its sleigh and Span of horses the latter being stabled during the winter and of course requiring hay; it therefore becomes most desirable and a simple of act of justice, that they be allowed to acquire more meadow land; the resident settlers of this neighborhood have hitherto [practically] respected the squatters rights of the Indians to Meadows, [never] attempting to [pre-empt] or purchase such lands [where] utilized by the Indians.

The meadow in question was until last year a Lake, this being drained has become a meadow, which was cut by these Indians for the first time last year – they have since erected fencing and buildings and were preparing to cut their hay this summer when Mr. Wright pre-empted it; under these circumstances I beg to submit for your consideration the possibility of effecting some arrangement with the Provincial Government whereby the Meadow could be secured to the Indians and thus avoid what appears at present a matter likely to cause serious trouble.<sup>40</sup>

In a third letter to Indian Superintendent Vowell, dated July 22, 1893, Indian Agent Laing-Meason stated that he had been “informed by Mr. Wright that the Indians have promised not to trouble him anymore with regard to his occupation of the meadow.”<sup>41</sup>

---

<sup>39</sup> Copy of Memorandum, A. W. Vowell, Superintendent of Indian Affairs, BC, to unidentified recipient, undated, LAC, RG 10, vol. 4048, file 360377 (ICC Exhibit 1a, p. 8).

<sup>40</sup> William Laing-Meason, Indian Agent, to A.W. Vowell, Indian Superintendent, Victoria, BC, July 19, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 5–6).

<sup>41</sup> William Laing-Meason, Indian Agent, Williams Lake Indian Agency, Lesser Dog Creek, BC, to A.W. Vowell, Indian Superintendent, Victoria, BC, July 22, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 7).

On September 21, 1893, Williams Lake Indian Agent Gomer Johns, Laing-Meason's successor, provided further detail on how the meadow was created and the Esketemc First Nation's use of it. Indian Agent Johns stated:

A Lake, formed by a dam on Alkali Lake Creek, was, by cutting this dam changed into a fine piece of meadow land, from which some Alkali Lake Indians have secured a crop of hay for two successive years previous to '93, in the meantime they had erected several large log buildings 5 or 6 – and had also done some fencing; when they were about to commence haying this season, a man named Wright preempted the same land and has been unsuccessfully endeavoring to get possession of the place, up to the present time; at the request of Wright and the Indians I visited the place on the 11th. of August, going along a sleigh road made by the Indians to this meadow – after hearing both parties I told the Indians that Wright was legally entitled to his pre-emption ...<sup>42</sup>

Indian Agent Johns further reported that Wright

was willing to compensate them [the Esketemc First Nation] for the work they had done, or he would take compensation from them and relinquish his title to the meadow. Mr. Wright was to state his terms on the following day and my reason for not reporting this matter to the Department at the time, was that I had strong hopes of an amicable settlement being effected. On the 13th. of August Mr. Wright gave me his terms, viz:– he would take \$250.00 or would [g]ive \$200.00, this was subsequently communicated to the Indians but they were determined to listen to no terms that would deprive them of the meadow; they secured the hay crop and are still in possession.

Mr. Wright came to me on Wednesday last the 20th. instant and complained of my doing nothing to assist him. I reminded him that I had cautioned the Indians about threatening him – which they had been guilty of before my visit – and warned them not to molest him in any manner, but as to dispossessing the Indians, I am afraid that it would take force to do so, at least as much force as a Constable may exercise. Yesterday in an interview with Father Lejacq of the Williams Lake Mission he told me that the Indians had sought his advice in the above matter, and that he had stated the case to the Hon. Theo. Davie on the occasion of a visit from Mr. Davie on the 17th. inst. Mr. Davie made notes of the conversation and promised to enquire into the matter.

---

<sup>42</sup> Gomer Johns, Indian Agent, Williams Lake Agency, 150 Mile House, to unidentified recipient, September 21, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 11).

I trust that some way may be found of securing the meadow to the Indians; the man Wright could not have expected to obtain peaceable possession of the meadow under the circumstances I have stated.<sup>43</sup>

On October 26, 1893, Chief August wrote directly to Indian Superintendent Vowell appealing for help. Chief August stated:

I would like if you would come and settle the trouble between my people and William Wright. My people have been cutting some meadows that belong to the Government for several years and have built houses and stables on them and cut out and made 7 miles of road to them, they lie back in the woods about 2 miles from one of our reserves. I will now try to explain why we do not wish to give up those meadows. I must acknowledge the Government has given us quite a lot of land but the biggest and best piece of land it gave us is no account to us only for a short time in the winter for pasture as there is no water on it, when my people go there in the Summer to gather berries they have to go to the river to get water to cook with and there is no show of getting any water on to it and on all of the other land the Government gave us there is not more than enough meadow to cut 15 ton of hay so if those other meadows are taken away from us we will have to dispose of our stock and how we will live I do not know as it is if we were left alone I think we could support ourselves, this trouble has been going on since July ... the trouble has been layed before your present Indian Agent this long time but there has been nothing done in regard to it so I appeal to you for help, please excuse me for bothering you but I do not know how else to look to for help. I forgot to state there is over 200 people in my reserve and it will starve all of us if we do not be allowed to keep those meadows so please come and settle this trouble for us.<sup>44</sup>

Chief August also mentioned in this letter that “Mr. Laing W. Meason [William Laing-Meason], your former Indian Agent, he has gone and Staked off another of the Meadows that my people have been cutting.”<sup>45</sup> It is also noteworthy that, in 1874, a “William Meason” was one of a group of Lillooet settlers who signed a petition urging the government to intervene on Wright’s

---

<sup>43</sup> Gomer Johns, Indian Agent, Williams Lake Agency, 150 Mile House, to unidentified recipient, September 21, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp.12–13).

<sup>44</sup> Chief August to Vowell, October 26, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 14–15).

<sup>45</sup> Chief August to Vowell, October 26, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 15).

behalf in the meadow dispute and to prevent Indians from residing off-reserve or to “hold or possess land known as crown land.” The petition also asserted that “[r]esidents have pre-empted land and have been put to a great deal of trouble to dispossess the Indians.”<sup>46</sup> Indian Superintendent Vowell later wrote of this petition, stating “the parties supposed to have signed it represent but a portion of the inhabitants in that neighbourhood and many of these did so merely because they were asked to do so by interested persons and not because they believed such a petition actually necessary.”<sup>47</sup>

#### **WILLIAM WRIGHT AND INDIAN AGENT WILLIAM LAING -MEASON**

At the community session, Irvine Johnson testified that his grandfather told him that “[t]he Indian Agent knew” the Esketemc First Nation had been using the meadow before Wright pre-empted it.<sup>48</sup> The testimony of the Elders and community members speculated that the local Indian Agent, William Laing-Meason, supported and assisted William Wright in his pre-emption of the meadow.<sup>49</sup> Elder Laura Harry recalled that her father, former Chief David Johnson, had said Indian Agent Laing-Meason “was always trying to get a hold of our land and sell it. But you can’t sell no Indian land. You couldn’t do it.”<sup>50</sup> Elder Andy Chelsea testified that he was told by Chief David Johnson that Wright and Meason were

[i]n-laws or – they were either in-laws or – I know Wright was married to Meason’s daughter or something. I know there was a real close relation there.

...

---

<sup>46</sup> Copy of Petition attached to letter from A. Reddie Campbell, Deputy Provincial Secretary, Provincial Secretary’s Office, Victoria, to Indian Superintendent, Victoria, BC, May 19, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 25–27).

<sup>47</sup> A.W. Vowell, Indian Superintendent, Indian Office, Department of Indian Affairs, Victoria, BC, to Deputy Superintendent General, August 6, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 37).

<sup>48</sup> ICC Transcript, July 5, 2006 (ICC Exhibit 5a, p. 293, I. Johnson).

<sup>49</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 19, J. Roper).

<sup>50</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 169, L. Harry).

He [David Johnson] says, well, they helped each other. Meason was the Indian Agent at the time, and they helped each other with lands around here and they were taking over lands that were being used by the Esketemc First Nation.<sup>51</sup>

Elder Willard Dick testified that former Chief David Johnson told him a similar story about the familial relationship between William Wright and Indian Agent Laing-Meason.<sup>52</sup>

Although the First Nation attempted to confirm the relationship between William Wright and Indian Agent Laing-Meason, no documentary evidence was located. The 1881 census indicates that William Wright married a woman named Placida, who had been born in British Columbia and was listed as being of Spanish and Roman Catholic heritage.<sup>53</sup> The 1901 census shows Placida's race listed as "r," and William Wright's race as "w."<sup>54</sup>

### **Why Was Lot 323 Pre-empted by William Wright?**

According to Esketemc oral history, Indian Agent Laing-Meason and Wright were interested in the pre-emption because "they figured the highway was going to come through – going to come through Wright's Meadow. But they built the highway where it is today. That's where people pick up land."<sup>55</sup> At the community session, Irvine Johnson testified that Wright and Meason planned to establish a "roadhouse" on lot 323 this allowing them to profit from those who would be travelling the road.<sup>56</sup> As a boy listening to his Elders and as a former Chief of the Esketemc First Nation,<sup>57</sup> Bill Chelsea learned that Indian Agent Laing-Meason and Wright

---

<sup>51</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 88, A. Chelsea).

<sup>52</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 132, W. Dick).

<sup>53</sup> "Information on William Wright," prepared by Beth Bedard for Esketemc First Nation, 2006 (ICC Exhibit 2d, p. 1).

<sup>54</sup> "Information on William Wright," prepared by Beth Bedard for Esketemc First Nation, 2006 (ICC Exhibit 2d, p. 1).

<sup>55</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 43, J. Johnson).

<sup>56</sup> ICC Transcript, July 5, 2006 (ICC Exhibit 5a, p. 295, I. Johnson).

<sup>57</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 196, B. Chelsea).

were trying to get ahead themselves, because Meason did grab Dog Creek, what we call Little Dog, Meason Creek. And after he lose out on the – Wright, I guess, and Meason, they were related in some way. But like I said earlier on, the road – the highway was supposed to come through Tselute, through Wright’s Meadow. It didn’t. It came down Dog Creek. And that’s when – there’s Meason Creek down there now because after they lose out on that, they went and grabbed the piece of property down Little Dog, what we call Little Dog.<sup>58</sup>

Elder Willard Dick stated his Elders told him that

[Wright and Laing-Meason] figured the highway was going to come through from Pigeon’s through here, up there through to Williams Lake. See, that road was used a long time ago ... So I guess in a way they figured this here highway was going to go through that same place, and so they get the place and they’ll have a stopping place or something. But the highway didn’t come that way. Instead it come through 100 Mile around Dog Creek. So that’s why Wright was really after that place up there.<sup>59</sup>

Many Elders testified that there was a dirt road through Tselute which they used to travel to the meadows in the area.<sup>60</sup> Other testimony indicated that the road was gazetted but never constructed.<sup>61</sup> Elder and former Chief Andy Chelsea stated that the road

started – it breaked [*sic*] off the Dog Creek road right now where it’s going, the one that you guys come out on. It breaked off at Meason Creek, Little Dog Creek, came up from there through the Rosette Meadows and then went to IR 13, and then from there it connected to the road that comes from Pigeon’s to what we call Tselute, and then it goes through to Tselute, from Tselute IR 11 to Springhouse, and then from Springhouse it went to Chimney Lake, to the Onward Ranch below what we used to call St. Joseph’s Mission.

...

---

<sup>58</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p.195, B. Chelsea).

<sup>59</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, pp. 132–33, W. Dick).

<sup>60</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 121, A. Wycotte; p. 52, A. Chelsea; p. 82, C.Y. Wycotte; pp. 99–100, M. Chelsea; pp. 108–9, V. Johnson); ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, pp. 161–62, D. Johnson; pp. 193–95, B. Chelsea).

<sup>61</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, pp. 52, 86, A. Chelsea).



It was a planned road. It never – I don't think it was really engineered at that time yet, but it was to be gazetted, a gazetted road. I know the one from Pigeon's to Springhouse has been gazetted.<sup>62</sup>

Elder Andy Chelsea speculated that the road dates back to the "1870s or 60s."<sup>63</sup> At the community session, Irvine Johnson, recalled what former Chief David Johnson had told him and shared another story about Wright and Laing-Meason. He testified that,

[a]s far as I can remember, the guy's name was Meason that was living over here looking for his fortune. He couldn't outright go up and pre-empt the land himself, so he hired someone. Wright, I imagine, worked for him or whatever. I don't know what the connection was. Could be son-in-law? Could be. I don't know. But it's just his name that comes up, but we know nothing about that says Tom [William] Wright was the guy that pre-empted these lands here.

...

He [Elder Irvine Johnson's grandfather, former Chief David Johnson] said hired. He knew that this is the way it was, you know. This is what happened. And I guess maybe there was a connection later. I don't know. You see, I can't – I mean, I'm a little kid hearing all of this here, so I'm not going to be told what he thought or how he thought. It's just me thinking about things much later, much after, you know what I'm saying, about why would Meason do this. But it's well known that he once – once the Cariboo road was established, that he left there and actually was one of the foremen on the road construction. He was the last person in that position out there at Little Dog.<sup>64</sup>

#### **IMPROVEMENTS: EVIDENCE OF AN INDIAN SETTLEMENT AND OCCUPATION?**

Contrary to William Wright's pre-emption declaration, which stated lot 323 did not constitute an Indian settlement, a number of the Elders and community members testified at the community session that the Esketemc First Nation had indeed made improvements on Tselute. Elder Victor Johnson testified that he had been shown a stackyard by Elder Patrick Johnson while they visited at Tselute. "He said it was five steps by 20, I think it was. It was opened on both ends. ... [It was on]

---

<sup>62</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, pp. 85–86, A. Chelsea).

<sup>63</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 86, A. Chelsea).

<sup>64</sup> ICC Transcript, July 5, 2006 (ICC Exhibit 5a, pp. 284–85, I. Johnson).

the southwest side of the lake there now.”<sup>65</sup> Stackyards were used by the First Nation to keep livestock away from the hay stored there as feed.<sup>66</sup> Elders Jake Roper, Andy Chelsea, Morris Chelsea, and Bill Chelsea also testified that they have seen stackyards at Tselute.<sup>67</sup>

At the community session, the Elders testified about other improvements made by the First Nation in the area of the pre-emption. Elder Jake Roper testified that there used “to be a barn there. That’s quite a while ago.”<sup>68</sup> Elder Morris Chelsea stated:

There was some remains of a old building there. And there was a fence along the edge and stackyards on the north side of the lake, and they had a fence further to the northeast right along the edge of the lake there.

...

I imagine it was the people from here [who used them], the older people, because it had to be cut before, I think, the ranch took over.<sup>69</sup>

Elder and former Chief Andy Chelsea stated:

There used to be a little area where there was camps and there’s ... kiglee [*sic*] huts up there where they lived in the past, I guess. I didn’t really look at it. But there are signs of where they had those, and the campgrounds are – when they’re fishing or feeding cattle, are still there. The stackyards are still visible, or was visible seven, eight years ago when I was up there last.<sup>70</sup>

---

<sup>65</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 110, V. Johnson).

<sup>66</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 27, J. Roper).

<sup>67</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 26, J. Roper; p. 56, A. Chelsea; p. 98, M. Chelsea); ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 191, B. Chelsea).

<sup>68</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 27, J. Roper).

<sup>69</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 98, M. Chelsea).

<sup>70</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, pp. 55–56, A. Chelsea). “Kiglee” is a variation of the traditional name for pithouses.

## **Pithouse**

During the course of the inquiry, evidence was put forward by the First Nation of what could be a distinctly Aboriginal improvement at Tselute. Beth Bedard, consultant for the Esketemc First Nation and expert witness in this inquiry, reported as follows:

On May 26<sup>th</sup> of 2005 while on a field trip with Esketemc community members and elders to Wrights [sic] Meadow a pithouse was located on a gentle south facing slope on the north shore of Place Lake.<sup>71</sup>

According to Beth Bedard, this pithouse

would have been overlooking the meadow area, what is the meadow area, or if there was a beaver dam there at an earlier period in time, it would have been overlooking that particular area with all the resources.<sup>72</sup>

Pithouses were used by many First Nations in British Columbia as “winter housing.”<sup>73</sup> Ms Bedard testified “they indicate long-term significant occupation. And what the pithouses also represent is several families usually, an extended family sometimes, that wintered in one location.”<sup>74</sup> Bedard described a pithouse as follows:

A pithouse is a semisubterranean winter dwelling that was used by First Nations people prehistorically.<sup>75</sup> The presence of a pithouse indicated a “prehistoric” Aboriginal use and occupation of the land.

...

The pit house identified in May 2005 at Tselute fits the pattern of pithouses from the interior of British Columbia. It is a smaller pithouse with a diameter of

---

<sup>71</sup> Beth Bedard, untitled report prepared for the Esketemc First Nation, c. March 2006 (ICC Exhibit 5k, p. 1).

<sup>72</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 218, B. Bedard).

<sup>73</sup> Beth Bedard, “Tselute Winter Habitation Feature,” undated PowerPoint presentation at community session, April 5 and 6, 2006 (ICC Exhibit 5l, p. 3).

<sup>74</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 207, B. Bedard).

<sup>75</sup> The term prehistoric is used in this context to mean before written records, or the European arrival in the area. [Footnote in original.]

approximately 7.8 meters and a depth of approximately 1.75 meters at its deepest point. The pithouse is dug into the south-tending slope.<sup>76</sup> Grasses and growth cover the ground, soil exposure was minimal. No artifactual material was observed in the limited ground exposures. The presence of a Lodgepole pine *Pinus contorta* with a diameter of 8" within the pithouse indicates a long period since it was abandoned. The pithouse depression does not have a rim, nor are sidewalls steep.<sup>77</sup>

Bedard reported that

[t]he traditional subsistence pattern, or life way for the Esketemc consisted of seasonal mobility in search of food. The Esketemc would travel to where the resources were located. In the spring, this could mean travelling to areas where bulbs such as sunflower root are located, or travel to areas such as Tselute or Gustafson Lake (Tsepeten) to fish. During the summer, berries would be harvested and salmon caught to dry for the winter months. In the fall Esketemc would travel to hunting areas, setting up camp for several weeks and hunting and preserving the meat for winter. Typically, they would spend the time from December through March living in these houses.<sup>78</sup>

Elder Morris Chelsea testified that, as a child, he spent a lot of time at Tselute. His family “didn’t start living up there till the late ’50s and early ’60s, somewhere around there.”<sup>79</sup> However, Elder M. Chelsea stated that he saw evidence of a pithouse “on the northwest side, and I think there’s more than one towards the middle of the north side of the lake.”<sup>80</sup>

The expert witness could not confirm when the pithouse at Tselute was abandoned; it could have been years before the pre-emption or shortly thereafter. Bedard stated that

---

<sup>76</sup> A GPS reading from the center [*sic*] of the pithouse was N 51°47.980' and W 121° 59.801 with an 8 meter [*sic*] margin of error. [Footnote in original.]

<sup>77</sup> Beth Bedard, untitled report prepared for the Esketemc First Nation, c. March 2006 (ICC Exhibit 5k, pp. 1, 5).

<sup>78</sup> Beth Bedard, untitled report prepared for the Esketemc First Nation, c. March 2006 (ICC Exhibit 5k, p. 1).

<sup>79</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 97, M. Chelsea).

<sup>80</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 98, M. Chelsea).

subsurface testing would be required to provide more specific information. ... there was not adequate capacity, personnel, funding or time to spend longer in the field to conduct further surveys nor to undertake subsurface testing.<sup>81</sup>

Without further testing and analysis, Bedard indicated that she could not “estimate how many winters, or other times for that matter, that the site was occupied.”<sup>82</sup> Although, Bedard contended that “[a]rtifactual debris is usually found at pithouse sites,”<sup>83</sup> she was unable to locate any such debris, perhaps due to the limited resources as stated above. Bedard estimated that the pithouse dwelling fell out of favour with the Esketemc First Nation “between the small pox epidemic in 1862–3 and sometime after the laying out of reserves in 1871.”<sup>84</sup>

Bedard was unable to confirm whether Wright would have been able to identify the pithouse as such. Similarly, it is not known if Wright held the required knowledge to equate the existence of the pithouse as “indisputable evidence of continued occupation and residence”<sup>85</sup> of the First Nation at the meadow. Bedard stated that, because the Esketemc people had advised Wright of their use and interest in the land, his viewing the pithouse or depression (in whatever condition it was found in 1893) “would not have been pivotal to his understanding that Tselute was being used by the

---

<sup>81</sup> Canada’s interrogatories; First Nation’s responses; Canada’s supplementary interrogatories; First Nation’s supplementary responses; provided by Beth Bedard, January 17, 2007 (ICC Exhibit 5m, p. 2).

<sup>82</sup> Canada’s interrogatories; First Nation’s responses; Canada’s supplementary interrogatories; First Nation’s supplementary responses; provided by Beth Bedard, January 17, 2007 (ICC Exhibit 5m, p. 2).

<sup>83</sup> Canada’s interrogatories; First Nation’s responses; Canada’s supplementary interrogatories; First Nation’s supplementary responses; provided by Beth Bedard, January 17, 2007 (ICC Exhibit 5m, p. 6).

<sup>84</sup> Canada’s interrogatories; First Nation’s responses; Canada’s supplementary interrogatories; First Nation’s supplementary responses; provided by Beth Bedard, January 17, 2007 (ICC Exhibit 5m, p. 1).

<sup>85</sup> Tho. L. Woody, Acting Attorney General, J.D. Pemberton, Surveyor General, A.W. Weston, Treasurer, to Acting Colonial Secretary, October 3, 1864, BCA, file 909, Lands and Works Department, vol. 1, 1864 Oct. to Dec. (ICC Exhibit 1c, p. 3).

Esketemc.”<sup>86</sup> However, it is Beth Bedard’s expert opinion that the depression present at Tselute is a pithouse.<sup>87</sup> Bedard concluded that

they were winter habitations. They are generally not more than four to five thousand years old. There has been some debate about pithouses that have been identified that are older than that, but for certainty, probably not more than four or five thousand years old. They indicated a family or extended family group that put in a great deal of work to have a good location to spend the winter.

And certainly along Tselute, it is an excellent location. With the south-facing slope you’d have the sun; you’d have the early fish in the spring.<sup>88</sup>

### FIRST NATION’S USE OF THE MEADOW

At the community session, many Elders and community members gave testimony regarding the use of the meadow and its importance to their way of life. Elder and former Chief Andy Chelsea explained that the meadow was communally organized. He stated that the meadow was “big, and it’s like it’s subdivided into sections. People would have certain areas to cut. There was a gentlemen’s agreement between them, I guess.”<sup>89</sup>

Elder Laura Harry recalled that, when she was a child, the meadow at Place Lake was bigger than the lake, saying “[i]t [the lake] was just a corner way back on the other – on the east side was a small lake, and the rest was just meadow. They dammed it up and spoiled it.”<sup>90</sup> She said that “[w]e used to cut hay a little on the other side. My dad used to have hay meadows out there.”<sup>91</sup>

---

<sup>86</sup> Canada’s interrogatories; First Nation’s responses; Canada’s supplementary interrogatories; First Nation’s supplementary responses; provided by Beth Bedard, January 17, 2007 (ICC Exhibit 5m, p. 7).

<sup>87</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 219, B. Bedard). See the video *Elder’s Visit to Ts’elute*, May 26, 2005 (ICC Exhibit 10), for a visual of the depression.

<sup>88</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, pp. 213–14, B. Bedard).

<sup>89</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 54, A. Chelsea).

<sup>90</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 171, L. Harry).

<sup>91</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 170, L. Harry).

Elder Willard Dick testified that the Esketemc First Nation cut hay at Tselute, saying “Indians used to cut it before Wright come in and cut it.”<sup>92</sup> Oral history indicates that the First Nation’s use of the meadow extended beyond haying. Elder Dorothy Johnson stated that the Esketemc people would “stay up there and trap. You know, they’d go up there and stay in the winter. Because they put hay up there and they used to trap and hunt and fish up that way, according to the seasons.”<sup>93</sup>

Elder Juliana Johnson spoke of Henry and Christine Squinahan, who both lived at Tselute with whom she often visited.<sup>94</sup> It was during these visits that Elder J. Johnson learned of the Esketemc First Nation’s use of Tselute:

In the winter they would ice-fish there and ... trap in the spring. And there was a lot of Indian medicines they made around Tselute and, well, I guess all over the meadows around there. Because Christine used to share some of those medicines with me that they made, including the swamp tea, and there’s a lot of other medicines ... And all over around Tselute they used to pick berries too.<sup>95</sup>

Elder Dorothy Johnson also spent time with the Squinahans at Tselute as a child.<sup>96</sup> She indicated on a map that where the Squinahans lived; this area was eventually surveyed as Sampson’s Meadow (or IR 11), on the west side of the power line. She also marked the boundaries of what the community knew as Tselute.<sup>97</sup>

Other Esketemc community members also resided at Tselute. The oral history often refers to a cabin at Tselute which was used by Jimmy Wycotte. Elder Augustine Wycotte, Jimmy Wycotte’s grandson,<sup>98</sup> stated that

---

<sup>92</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 133, W. Dick).

<sup>93</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 162, D. Johnson).

<sup>94</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 69, J. Johnson).

<sup>95</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 70, J. Johnson).

<sup>96</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 159, D. Johnson).

<sup>97</sup> Map of Esketemc First Nation Reserves with legend, prepared by V.L. Robbins, June 25, 2005, produced at community session, April 5 and 6, 2006, held at the Esketemc First Nation, Alkali Lake, BC, with markings made at community session held April 5, 2006 (ICC Exhibit 5c, p. 1). See “x” on Map 2.

<sup>98</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 125, A. Wycotte).

[a]s far as I know, my dad turned over the cabin and the field to his brother-in-law, Patrick Chelsea, at Tselute, and he moved over to a place we call Canada. It actually belonged to his brother, Louie Wycotte.

...

As far as I can gather, ... the Esketemc people used it [Tselute] for fishing, for trapping, hunting, medicine, and they still do ceremonies up there yet. That's what I gather anyway. And they still pick their – some people still pick their medicine bands from Tselute. So it's – I guess it belonged to the Esketemc people as far as I know.<sup>99</sup>

Elder Augustine Wycotte also related what his older sister, Emily, told him about Tselute:<sup>100</sup>

she grew up there and she was – she used to help my grandparents pick plants and go fishing. And she was telling me that during the early spring, they make little knolls along the lake there so the ducks could come in and lay their eggs, and she was saying that they take one egg from each nest, take it home for use. ... So I guess they did use Tselute for – not only for fishing and stuff like that. They used it for hay. They cut their hay there and they stored it for the winter for their animals, their horses, their cattle, whoever had cattle.<sup>101</sup>

Irvine Johnson, who received the oral history of the Esketemc First Nation through his father, former Chief David Johnson,<sup>102</sup> stressed the importance of the meadow to his First Nation:

It was very important that hay meadows be cut because the horse was really important to – and I can't stress enough the importance of the horses within this community. There were some families that had – there was one family that had over a hundred horses, and they were useful horses. They had purpose. All of the horses had purpose. They weren't just left out there to be wild or anything. I mean, there were saddle horses, there were pack horses, there were team.

And they had a purpose. So it was really important that you cut hay during the summers in order to be able to feed your horses over the winter, and if you had cattle. And there were some families that had cattle. There were some that had more cattle than we have now actually, and they were more industrious people.

---

<sup>99</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, pp. 118–19, A. Wycotte).

<sup>100</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 122, A. Wycotte).

<sup>101</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 119, A. Wycotte).

<sup>102</sup> ICC Transcript, July 5, 2006 (ICC Exhibit 5a, p. 245, I. Johnson).



I guess that when the times that we're talking about – or in this specific instance, the people used to cut their hay with those sickles and a scythe before the mowing machines came around. So in the time that we're talking about, the time during the pre-emption, people were cutting hay by hand.<sup>103</sup>

Elders Dorothy Johnson and Elder Irvine Johnson both stated that Louie Dan and the Chelsea family also had cabins in the Tselute area.<sup>104</sup>

#### **GOVERNMENT RESPONSE: THE SPECIFICS OF THE CONFLICT**

In November 1893, Indian Agent Gomer Johns visited Alkali Lake to investigate the disputed meadow and to follow up on allegations contained in Chief August's letter of October 26. Indian Agent Johns reported:

On receipt of your letter I made a special trip to Alkali Lake, and in Company with Chief August and other Indians, I went carefully over the 5 Reserves situated on Alkali Lake Creek; on four of these, there is a little meadow land, but the total crop of hay is only about 50 tons; – not 15 tons as stated in August's letter. – their need of more meadow land is evidenced by the fact that for several years they have put up more hay on land outside of their Reserves than on their Reserves; Exclusive of the meadow preempted by Wright the quantity of hay put up outside the Reserves is about 60 tons, but if we include that meadow – which is still in dispute as regards this year's crop – we have a total of about 140 tons as against 50 tons obtained on the Reserves. I visited the Wright meadow and made a rough estimate of the amount of hay in the different stacks, the result being about 80 Tons, the Indians' estimate was much higher; 200 Tons could be obtained on this meadow if required; the assertion in Chief August's letter that his band of 200 people will starve if they lose this meadow is, of course, nonsense, but it will certainly be a very serious loss to them; apart from the loss of the meadow itself, the disturbance caused by the intrusion of a white settler on a range practically enclosed by these 5 reserves will be a continual source of annoyance, besides the loss of the pasturage of which hitherto they have

---

<sup>103</sup> ICC Transcript, July 5, 2006 (ICC Exhibit 5a, p. 250, I. Johnson).

<sup>104</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 166, D. Johnson); ICC Transcript, July 5, 2006 (ICC Exhibit 5a, p. 268, I. Johnson).

had a monopoly. I may here remark that the Reserves are for the most part fenced in.<sup>105</sup>

Indian Agent Johns also noted that:

I am informed by Mr. Soues Gov't Agent at Clinton, that Wright's preemption is dated 8th July/93 and that he obtained Leave of Absence for 3 months on the 2nd October; as a matter of fact Wright has never entered into occupation of the land as required by Clause 13 of the Land Act; apparently he intends to grade the requirements of the Act as to residence, and to hold the place as a Hay Ranch the only thing for which it is adapted.<sup>106</sup>

Provincial officials became involved in the dispute in late 1893. On November 28, 1893, Attorney General Theodore Davie wrote to BC Agent F. Soues saying that he had learned of the dispute between the Esketemc First Nation and Wright and had been informed "that to grant the pre-emption would cause great trouble with the Indians who have no other land on which to cut hay."<sup>107</sup> Davie wanted to know Soues's opinion on the matter.<sup>108</sup> Government Agent Soues responded to Davie's letter on January 18, 1894, stating:

I know of no reason why Mr. Wright should not be confirmed in his settlement on the pre-emption.

I presume the Indian Commissioner in laying off the Indian Reserves was satisfied that the Alkali Lake Indians had a sufficient Reserve and with this meadow so close to the line of their Reserve, and the Indians' knowledge of the distance of the meadow, that if they had applied for it then, it is more than probable that the Commissioner would have granted that also. As the matter stands, Mr. Wright pre-empted Crown lands unoccupied and unreserved. I may add that I allowed pre-

---

<sup>105</sup> Gomer Johns, Indian Agent, Williams Lake Indian Agency, 150 Mile House, BC, to A.W. Vowell, Indian Superintendent, Victoria, BC, November 17, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 16–20).

<sup>106</sup> Gomer Johns, Indian Agent, Williams Lake Indian Agency, 150 Mile House, BC, to A.W. Vowell, Indian Superintendent, Victoria, BC, November 17, 1893, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 20–21).

<sup>107</sup> Theodore Davie, Victoria, BC, to F. Soues, Government Agent, Clinton, BC, November 28, 1893, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, p. 43).

<sup>108</sup> Theodore Davie, Victoria, BC, to F. Soues, Government Agent, Clinton, BC, November 28, 1893, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, p. 43).

emption last year of some half dozen just such meadows, to the north of Clinton, and on which the Indians here have cut an annual crop of wild hay, but I have always given them to understand that whenever required by white men, that they must give peaceable possession, and have never had the slightest trouble.<sup>109</sup>

With respect to Agent Soues's suggestion that the First Nation could have requested that the meadow be set apart for their use at the time of Commissioner O'Reilly's visit in 1881, it should be reiterated that the land in question was under water at that time. The First Nation did not remove the beaver dam and drain the meadow until 1891 or 1892.

Still attempting to secure the meadow for its use, the Esketemc First Nation approached the Reverend Father Lejacq of St Joseph's Mission at Williams Lake, asking him to raise the subject with government officials. In a letter dated January 18, 1894, Father Lejacq stated:

When the Commission, appointed by the Government, had marked out the Reservation for the Alkali Lake Band; the Indians made the remark that there was no meadow land in the said Reservation, so they begged the Commission for some meadow land; then Judge O'Reilly told them to look round and try to find some good place for making hay, to take what they would find, to fix it and the Government would grant it to them. Now the Indians Acting according to the suggestion of the Commissioner, located a place, a swampy place, at the head of this creek drained it, cut the brush, put fences, built stables, even houses, in a word, made a good meadow out of a useless swamp and now when they are beginning to reap the fruits of their hard labour, a white man comes and wants to snatch it from their hands.<sup>110</sup>

Father Lejacq quoted the First Nation, saying:

If the Government, they say again, cannot give us that meadow land as a complement to our reservation, we are ready to pay for it just the same as the white man; we badly want the place, as everybody round here knows, we have made the place ourselves, we drained the swamp and we think that we have the first right, in fact that we are entitled to the place. Mr. Wright tells us that the Government considers the Indians as nobody, that it does not care more about us that it does about the coyote, that the sooner we are all dead the better. We would like to know if really

---

<sup>109</sup> F. Soues, Government House, Clinton, BC, to Theodore Davie, Attorney General, Victoria, January 18, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, pp. 44–45).

<sup>110</sup> J.M.J. Lejacq, OMI, St Joseph's Mission, Williams Lake, to unidentified recipient, January 18, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, p. 46).

such is the case? Not later than yesterday the same Mr. Wright passed through our village and told us that in two weeks and a half from date, the soldiers would be up and they would clean us all off the face of the earth. Now such language sounds harsh in the ears of our young men, and we, old men, have great difficulty in keeping them quiet.<sup>111</sup>

Father Lejacq concluded his letter by offering his opinion that the government should grant the meadow to the First Nation, citing it as the “shortest and cheapest way of settling the matter.”<sup>112</sup>

Father Lejacq’s letter prompted Attorney General Davie to request that Government Agent Soues delay the issuance of Wright’s pre-emption so that an investigation could be held into the allegations contained in the missionary’s letter.<sup>113</sup>

Government Agent Soues replied to Davie’s request on January 29, 1894, acknowledging that:

In my letter to you of the 18th inst. on this matter, I assumed that there had been no action taken, with regard to the meadow, by Indian Commissioner O’Reilly, when laying off the reserves for that band of Indians.

The Rev. Father’s letter to you however puts a very different light on the question, and from which it would appear that they – the Indians – were promised meadow land as soon as they could find some place suitable for making hay.

Of this I have no knowledge as on receiving Wright’s application and declaration ... in July last, I had no reason to refuse to record his application and issue a certificate of pre-emption record.

...

... In the meantime would it not be advisable to refer the matter to the Hon. P. O’Reilly, Indian Commissioner. He may have made a note, or have some recollection in regard to the arrangement for a hay meadow as stated by the Rev. Father Lejacq.

If the improvements have been made on the meadow as stated by the Rev. Father, then Wright’s declaration as to the land being unoccupied falls to the ground.

---

<sup>111</sup> J.M.J. Lejacq, OMI, St Joseph’s Mission, Williams Lake, to unidentified recipient, January 18, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, p. 47).

<sup>112</sup> J.M.J. Lejacq, OMI, St Joseph’s Mission, Williams Lake, to unidentified recipient, January 18, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, p. 47).

<sup>113</sup> Theodore Davie, Victoria, BC, to [F. Soues], Government Agent, Clinton, BC, January 26, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, p. 49).

I must say that I have no admiration for any of these wild meadow pre-emptions by white men. They take them up for the sole purpose of cutting the annual natural crop of wild grass, settlement and occupation in the proper meaning of these words are out of the question. Besides not one of these pre-emptors [but] knows as well as I do that agriculture is out of the question ...<sup>114</sup>

On February 3, 1894, Attorney General Davie approached Indian Reserve Commissioner Peter O'Reilly regarding Father Lejacq's letter. Davie wrote:

If it should be the case that the pre-emption has been obtained by Mr. Wright under false pretences, for lands practically set aside for the use of the Indians and improved for their purposes, steps should be, I think, at once taken on behalf of the Indians before the Commissioner to set the record aside.<sup>115</sup>

O'Reilly responded on February 7, 1894, by recounting his visit to Alkali Lake:

The Reserve Commission visited Alkali Lake in July 1881 ...

...

The Indians were naturally anxious to possess as much hay land as possible, and every acre pointed out by them that had not already been alienated was secured to them. I also invited them to shew me any other plots of land they were in the habit of using, had they done so, it would have been included in the reserves. I certainly did not in any way encourage them to occupy and improve land outside of their reserves as such advice would have been entirely opposed to my instructions.

It is much to be regretted that the Indians should have improved the land now taken possession of by Mr. Wright under a record of preemption, but it is strange that since 1881 to the present time no intimation has reached me either from the Indians, or from their Agent that this meadow was so highly prized by them; and no request has been made to me to have it declared a reserve, notwithstanding that I have since then, on several occasions passed through that part of the country.

If there are any other meadows, not legally held by whites, where the Alkali Lake Indians are in the habit of cutting hay, besides that preempted by Mr. Wright they may yet be secured to their use. In that event I would suggest that the

---

<sup>114</sup> F. Soues, Clinton, BC, to Theodore Davie, Attorney General, Victoria, BC, January 29, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit, 1c, pp. 51–52).

<sup>115</sup> Theodore Davie, Victoria, BC, to P. O'Reilly, February 3, 1894, LAC, RG 10, vol. 11013 (ICC Exhibit 1c, p. 54).

Government Agent of the district be instructed not to accept for the present any further applications to preempt.<sup>116</sup>

On July 2, 1894, Indian Agent Bell (Gomer Johns's successor at the Williams Lake Agency) reported to Indian Superintendent Vowell that Wright was claiming that the Esketemc First Nation's improvements were not located within his pre-emption and that Wright "warned" him that he intended to cut hay at the meadow that season.<sup>117</sup> Indian Agent Bell requested Indian Superintendent Vowell to visit the meadow personally to settle the dispute.<sup>118</sup> On the same day, Government Agent F. Soues also asked Vowell to visit the meadow to give "executive attention" to the matter.<sup>119</sup>

Indian Superintendent Vowell visited Alkali Lake on July 23, 1894. Reporting to the Deputy Superintendent General of Indian Affairs on August 6, 1894, Vowell stated:

At present from 100 to 160 tons of wild hay can be cut upon it and it has been their custom to cut hay there and in the winter drive their cattle there and feed them; they have also for a distance of some seven miles cut a sleigh road through the timber to enable them when required to haul some of the hay to other places. They have also done some fencing around a portion of it, and have built some houses for winter use. I may also state that when on my way to the meadow ... several smaller ones were brought to my notice where different members of the band have for years been cutting hay. They ... claim that such facilities for feeding their stock during the winter months is an absolute necessity, as the amount of hay possible to obtain from their reserves is insignificant when compared with their requirements. They have amongst them over 200 head of cattle besides many horses. ... and as they have comparatively little cultivable land, their chief support centres in their cattle. ... They were not unreasonable, but still kept strongly to the point that without the meadows they and their children would be without sufficient means for their support. For my own part I consider that their demands are worthy of consideration and I would strongly urge that all these patches of meadow lands situated in the mountains which have for years

---

<sup>116</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Theo. Davie, Attorney General, Victoria, BC, February 7, 1894, LAC, RG 10, vol. 1278, pp. 298–300 (ICC Exhibit 1a, pp. 22–24).

<sup>117</sup> E. Bell, Williams Lake Agency, Clinton, BC, to A.W. Vowell, July 2, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 30).

<sup>118</sup> E. Bell, Williams Lake Agency, Clinton, BC, to A.W. Vowell, July 2, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 30).

<sup>119</sup> F. Soues, Government Agent, Government Office, Clinton, BC, to A. Campbell Reddie, Deputy Provincial Secretary, Victoria, July 2, 1894, Provincial Collection, binder 12, corr. no. 996/94 (ICC Exhibit 1c, p. 55).

been used by them and which come under the head of "waste lands of the Crown" be reserved to them without delay. ...

I may say that the Indians have promised not to interfere with Mr. Wright should he go to take possession, in the meantime the Chief and his people are going to make an effort to settle the matter amicably with Wright whereby they can still retain possession of the meadow, in which case it should be at once made an Indian Reserve.<sup>120</sup>

A marginal note found on this document reads: "D.S.G. Ask [Agent] to [go] & have other lands secured as hay meadows soon as possible."<sup>121</sup>

On the day after Vowell's August 6 report, Government Agent Soues wrote to the Deputy Provincial Secretary, A. Campbell Reddie, regarding Indian Superintendent Vowell's July visit to Alkali Lake, stating, "I understand that he [Vowell] has decided that the Indians have no title to that particular piece of land" and that Wright had been informed "that until the matter has been finally settled by the Executive, he must refrain from interfering in any way with the land."<sup>122</sup> An undated draft letter, however, apparently written on the back of this August 7 letter, indicates the contrary:

I am directed to inform you that it has been decided by the Gov't that you should at once cancel the record of pre-emption which was granted to Mr. W.H. Wright, covering a certain meadow upon which the Alkali Lake Indians have been in the habit of cutting hay. When Mr. Wright applied for a record of this meadow he made a declaration, in error that the land was not an Indian Settlement or any portion thereof whereas the fact that the Indians had been in the habit of occupying this land for hay cutting purpose proves that it was a portion of their settlement.

The Indian Reserve Commr has been requested to make a formal Reserve of the meadow.<sup>123</sup>

---

<sup>120</sup> A. W. Vowell, Indian Superintendent, Indian Office, Department of Indian Affairs, Victoria, BC, to Deputy Superintendent General, August 6, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, pp. 34–37).

<sup>121</sup> A. W. Vowell, Indian Superintendent, Indian Office, Department of Indian Affairs, Victoria, BC, to Deputy Superintendent General, August 6, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 33).

<sup>122</sup> F. Soues, Government Agent, Government Office, Clinton, BC, to A. Campbell Reddie, Deputy Provincial Secretary, Victoria, August 7, 1894, Provincial Collection, binder 12, corr. no. 1161/94 (ICC Exhibit 1c, p. 61).

<sup>123</sup> Draft letter, author and recipient unknown, date unknown, purportedly attached to reverse side of letter from F. Soues, Government Agent, Government Office, Clinton, BC, to A. Campbell Reddie, Deputy Provincial Secretary, Victoria, August 7, 1894, Provincial Collection, binder 12, corr. no. 1161/94 (ICC Exhibit 1c, pp. 62–63). It should be noted that the draft was written on two pages, whereas the letter to which it is attributed in its transcription

The name “F. Soues” appears at the bottom of this draft letter, but it is not clear who wrote it, who the intended recipient was, or if it was ever, in fact, sent. Neither of these letters appears to have resolved the matter, but the documentary record indicates that Indian Superintendent Vowell continued to work to settle the dispute between the Esketemc First Nation and Wright.

The Deputy Superintendent General of Indian Affairs wrote to Indian Superintendent A.W. Vowell on August 16, 1894, instructing him as follows:

[I]f the Indians manage to induce Mr. Wright to relinquish his claim you should, without delay, approach the Provincial authorities, through the Reserve Commissioners if necessary, and endeavour to get them to secure the land to the Indians, or failing that, ask them to apportion some others in lieu of the meadow, and also reserve to the Indians any other hay lands used by them, and considered by you really necessary for the support of their stock.<sup>124</sup>

The provincial Department of Lands and Works became involved in the disputed meadow the following week, when the Chief Commissioner of Lands and Works (CCLW) wrote to Indian Reserve Commissioner O’Reilly, asking whether the Esketemc First Nation had any right to or need of the meadow.<sup>125</sup> O’Reilly replied on August 26, 1894, referring the CCLW to his February 7, 1894, letter to Attorney General Davie, in which O’Reilly had dismissed the First Nation’s claim to the meadow.<sup>126</sup>

On September 4, 1894, the CCLW, F.G. Vernon, wrote to F. Soues, BC Government Agent, informing him that the Esketemc First Nation can “claim compensation if they are debarred from

---

is only one page in length. For that reason, it is possible that it is actually found on the reverse of another letter of the same date, August 7, 1894, from A.W. Vowell to the Provincial Secretary. See A.W. Vowell, Indian Superintendent, BC, to Provincial Secretary, Victoria, August 7, 1894, Provincial Collection, binder 12, corr. no. 1140/94 (ICC Exhibit 1c, pp. 57–60).

<sup>124</sup> Deputy Superintendent General of Indian Affairs to A.W. Vowell, Indian Superintendent, Victoria, BC, August 16, 1894, LAC, RG 10, vol. 3917, file 116524 (ICC Exhibit 1a, p. 39).

<sup>125</sup> F. G. Vernon, Chief Commissioner of Lands and Works, to P. O’Reilly, Indian Reserve Commissioner, Victoria, August 22, 1894, LAC, RG 10, vol. 11014, p. 28 (ICC Exhibit 1a, p. 40).

<sup>126</sup> P. O’Reilly, Indian Reserve Commissioner, Victoria, to Chief Commissioner of Lands and Works, August 26, 1894, LAC, RG 10, vol. 1279, p. 1 (ICC Exhibit 1a, p. 41). See also P. O’Reilly, Indian Reserve Commissioner, Victoria, BC, to Theo. Davie, Attorney General, Victoria, BC, February 7, 1894, LAC, RG 10, vol. 1278, pp. 298–300 (ICC Exhibit 1a, pp. 22–24).



acquiring the land”<sup>127</sup> and instructing him to visit the meadow to “make an approximate estimate of the value of the improvements made by the Indians and also by Mr. Wright (if any).”<sup>128</sup>

It was not until October 16, 1894, that C. Phair, Acting Government Agent, reported on his visit to the meadow and his evaluations. Acting Government Agent Phair stated:

1. The only improvements they made upon the land in question consist of six small stock yards and cutting a dam which I estimate at the value of \$45.00.

2. About 400 yards from the lower line of said pre-emption, and upon Crown lands, they built one dwelling house and partly four others; one stable and partly built another; also a small corral, about 500 yards brush fencing (cut small trees and raised them on the stumps) and cut a road about a mile in length. The value of above I estimate at \$145.00.

Total value of improvements \$190.00

This is a liberal estimate. The road was easily made as they only cut a little brush and a few small trees: Where the houses are built suitable trees for logs are on the spot in abundance.

I was accompanied by Indians of Alkali Lake Tribe and Mr. Bell the Indian Agent. Only a difference of three dollars was between Mr. Bell and myself as to the value of the improvements. The Indians told me that five years ago the meadow in question was a lake: that they cut a dam which has since drained it – for the purpose of catching beaver and after killing some of them the remainders deserted the place: that in [1892] they found the place had been converted into a meadow and in that year they cut upon it a small quantity of hay, and, that last year they cut a good deal which is still stacked on the place. This year none of it has been cut. It is a very good meadow fully one and one fourth miles in length by more than half a mile in width. In my opinion 160 tons of hay can be cut on it as it is at present and it can be improved so that fully 225 tons can be cut. There is a lake on the pre-emption comprising about 80 acres.

As shown by the rough sketch attached there are about 100 acres of good meadow land outside the pre-emption, at both ends of it, which could be easily cleared only a little brush on it.

---

<sup>127</sup> Chief Commissioner of Lands and Works, Victoria, to F. Soues, Government Agent, September 4, 1894, no file reference available (ICC Exhibit 1a, p. 42).

<sup>128</sup> Chief Commissioner of Lands and Works, Victoria, to F. Soues, Government Agent, September 4, 1894, no file reference available (ICC Exhibit 1a, p. 42).

Mr. W.H. Wright has not made any improvements on the land being instructed by Mr. Soues not to do so until the matter was settled.<sup>129</sup>

Indian Agent Bell also reported this visit to evaluate the First Nation's improvements to his superior, Indian Superintendent Vowell. Bell's report is similar to Phair's; however, Bell pointed out that only a limited number of the First Nation's improvements were included in Wright's pre-emption.<sup>130</sup> Bell also noted that

Mr. Moore told me that five years ago there was no meadow there but a large lake and no doubt if it were not for the Indians cutting the dams it would still be a lake and Wright would not have known of it.

I enclose you a copy of Wright's application to record also Certificate of preemption records which are not at all alike as you will see from sketch on back. The meadows the longest way – about 1 1/4 miles runs east & west but the way his application shows it will be crossing it and if in actual [illegible] he is compelled to comply with his application the best portions of the meadow will be open for [illegible].<sup>131</sup>

As mentioned earlier, section 7 of *Land Act, 1884*, stipulated that all pre-emptions of 320 acres were to be rectangular in shape, with the long sides running north and south. Based on the sketch attached to Wright's pre-emption application, it appears that he complied with this regulation when applying for his pre-emption record.<sup>132</sup> However, the sketch attached to the Crown grant for lot 323, which was eventually issued to Wright, shows a rectangular lot with the long sides running east-west.<sup>133</sup>

---

<sup>129</sup> C. Phair, Acting Government Agent, Government office, Clinton, BC, to W.S. Gore, Deputy Commissioner of Lands and Works, Victoria, BC, October 16, 1894, LAC, RG 10, vol. 11014, pp. 51A–51B (ICC Exhibit 1a, pp. 49–50).

<sup>130</sup> [Bell, Indian Agent], to A.W. Vowell, October 16, 1894, LAC, RG 10, vol. 11014, p. 47A (ICC Exhibit 1a, p. 51).

<sup>131</sup> [Bell, Indian Agent], to A.W. Vowell, October 16, 1894, LAC, RG 10, vol. 11014, p. 47A (ICC Exhibit 1a, p. 51).

<sup>132</sup> Application to Record (under the *Land Act, 1884*, ss. 7 and 8) by W.H. Wright, July 8, 1893, BCA, GR 1440, F. 2319/93 (ICC Exhibit 1b, p. 3)

<sup>133</sup> Crown grant no. 1145/103, W.H. Wright, June 22, 1899, BCA, no file reference available (ICC Exhibit 1b, p. 12).

### **RESERVE ALLOTMENTS AT ALKALI LAKE, 1895**

Although the historical record contains limited information about the meadow from 1894 on, there is evidence that the Esketemc First Nation received an allotment of additional meadow lands shortly thereafter. In 1895, Indian Reserve Commissioner Peter O'Reilly set aside an additional seven reserves for the Esketemc First Nation. In a report to the Deputy Superintendent General of Indian Affairs, O'Reilly wrote:

Though these Indians are already in possession of reserves allotted to them in 1881, and which contain 5587 [*sic*] acres,<sup>134</sup> they have recently complained of a scarcity of hayland as their bands of cattle, and horses have largely increased, and it was with a view to supplying this want that my present visit to Alkali lake was undertaken.

The Chief "August" and a large number of his people accompanied me to point out the several pieces of land which they desired to have secured to them; Mr. Agent Bell also was present, and assisted much in the selection of the seven following locations.

...

The meadow lands in all the above reserves are capable of being enlarged by clearing, with a very small amount of labor; the Indians at present only using those portions that are naturally free of brush. They are at too great an altitude to admit of their being used for any other purpose.<sup>135</sup>

One of the reserves set aside by O'Reilly in 1895 is IR 11A, also known as "Sampson's Meadow" which is located immediately west of "Wright's Meadow."

### **CROWN GRANT OF LOT 323, 1899**

Four years later, on May 23, 1899, William Harrison Wright received a certificate of improvement for lot 323 (or "Wright's Meadow").<sup>136</sup> On June 22, 1899, Wright received Crown grant

---

<sup>134</sup> This should read 3,587 acres.

<sup>135</sup> P. O'Reilly, Indian Reserve Commissioner, Victoria, BC, to Deputy Superintendent General of Indian Affairs, September 26, 1895, LAC, RG 10, vol. 1279, pp. 74–75; Federal Collection, vol. 14, pp. 117–25 (ICC, Exhibit 1c, pp. 66–69).

<sup>136</sup> Certificate of improvement, William H. Wright, May 23, 1899, BCA, no file reference available (ICC Exhibit 1b, p. 7).

no. 1145/103 for the same lot.<sup>137</sup> The allotment of these newer reserves and Wright's Crown grant seem to have had little effect on how the community used the lands and meadows. At the community session, many Elders testified that they were unaware Wright's Meadow was not reserve land until later in the 1900s, since most of them regularly travelled through the meadow during their seasonal travels as they were growing up.<sup>138</sup>

### THE MEADOW POST-CROWN GRANT

The historical documents for this inquiry are silent on the fate of the meadow after Wright received his Crown grant for lot 323 in 1899. There is no indication on the documentary record of this inquiry of how William Wright may have used the meadow. In receiving the certificate of improvement, William Wright declared that he had "made improvements amounting in the aggregate of two dollars and fifty cents an acre on such Pre-emption claim" as required by the *Land Act, 1884*.<sup>139</sup> The certificate of improvement also indicates that Joseph Place and a second unidentified settler had provided evidence that "improvements consisting of house, stable, corrals, fencing and clearing aggregating \$1000.00 have been made on the pre-emption of the said W.H. Wright."<sup>140</sup> Anne Seymour concludes:

While Wright may have been prevented from going to the pre-emption during the dispute, it is a questionable declaration that he was "in occupation" of the land as required by the 1884 *Land Act* from the date of his pre-emption record to 1899. It has not been possible to confirm where Mr. Wright actually resided.<sup>141</sup>

---

<sup>137</sup> Crown grant no. 1145/103, William H. Wright, June 22, 1899, BCA, no file reference available (ICC Exhibit 1b, pp. 8–14).

<sup>138</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 41, J. Johnson; p. 66, R. Dick; p. 73, Juliana Johnson; p. 91, Marilyn Belleau; p. 97, Morris Chelsea); ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 161, D. Johnson; p. 168, L. Harry).

<sup>139</sup> Certificate of improvement, William H. Wright, May 23, 1899, BCA, no file reference available (ICC Exhibit 1b, p. 7).

<sup>140</sup> Certificate of improvement, William H. Wright, May 23, 1899, BCA, no file reference available (ICC Exhibit 1b, p. 7).

<sup>141</sup> Anne Seymour, "Pre-emption Policies, Indian Settlements & Reserve Establishment in British Columbia, 1860–1898," prepared for Specific Claims Branch, Indian and Northern Affairs Canada, November 17, 2005, p. 83 (ICC Exhibit 3b, p. 86).

Elder Willard Dick stated that, as far as he was aware, Wright never lived at the meadow.<sup>142</sup> Elder W. Dick testified that Joe Place did build a cabin at the meadow after he purchased the land from Wright, but no oral history was shared regarding why Place purchased it.<sup>143</sup>

Documents obtained from the Land Registry Office in Kamloops and submitted by the First Nation indicate that, on July 19, 1901, William Wright transferred his title to lot 323 to Joseph Place who, in turn, held it until 1922.<sup>144</sup> Lot 323 subsequently went through a number of owners before being purchased by the Alkali Lake Ranch in 1940.<sup>145</sup> John Mervin Douglas,<sup>146</sup> described as the “Ranch Manager” of Alkali Lake Ranches [*sic*], currently holds the certificate of indefeasible title, dated October 24, 1977, to lot 323, Lillooet District, or what is referred to as Wright’s Meadow.<sup>147</sup>

At the community session, Elder Victor Johnson testified that the First Nation continued to use Tselute after William Wright pre-empted lot 323.<sup>148</sup> During her testimony, Elder Marilyn Belleau was asked: “How long did your family use that meadow?” She stated, “As far as I know, they used it probably three generations, four generations.”<sup>149</sup> It is generally accepted that one generation equates to approximately 20 years, therefore Elder Belleau’s testimony indicates the Esketemc First Nation used the meadow for about 60 or 80 years, or until 1953 or 1973. When asked, “And when

---

<sup>142</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 145, W. Dick).

<sup>143</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 145, W. Dick).

<sup>144</sup> Search of title documents related to the ownership/pre-emption history of Wright’s Meadow, Land Titles Office, Kamloops (ICC Exhibit 1d, pp. 10, 14).

<sup>145</sup> Certificate of indefeasible title no. 810219, August 21, 1940, Land Registry Office, Kamloops (ICC Exhibit 1d, p. 4).

<sup>146</sup> Referred to as Doug Mervyn by Elder Bill Chelsea at the community session. ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 202, B. Chelsea).

<sup>147</sup> Certificate of indefeasible title no. N62872F, October 24, 1977, Land Registry Office, Kamloops, BC (ICC Exhibit 1d, p. 2).

<sup>148</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 111, V. Johnson).

<sup>149</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 92, M. Belleau).

did your use of the meadow stop?” Elder Belleau responded: “Probably in the – probably 1962, ’63, around there.”<sup>150</sup>

Some Elders at the community session, however, testified to the contrary. When asked if the First Nation made use of the meadow after the pre-emption, community member Irvine Johnson stated that “[a]fter the guy kicked them [the Esketemc First Nation] off, after the *semahs* took over, the Indians didn’t use it. The only time that I can remember any use of it was in wintertime when we went across it, like we used it as a road rather than for any hay.”<sup>151</sup> Expanding on why the Esketemc First Nation discontinued its use of the meadow, Irvine Johnson stated:

Well, they weren’t there when he came back and successfully staked out the lands. So after that, when is [*sic*] was staked out, that *semah* owned this piece of land here. ... But they had to get somewhere else. ... I guess rather than start a war or whatever, they were more pragmatic and just went and found another place, because it was a case of, you know, like you can’t stop and say, “That’s ours. That’s ours” and then stand a chance of losing it. You know, they had to feed their horses. You see what I’m saying?

So it wasn’t a case of, you know, this is where we’re going to put our spear and chain ourselves here, you know, because who hears you anyway? Everything is by mail a long ways away. And pretty soon, you know, six months go by and nobody hears anything, you know, and in the meantime you’re still hot under the collar or whatever because white men came and stole this piece of land from you.<sup>152</sup>

Elder J. Roper told a similar story at the community session.<sup>153</sup> After Place Lake was dammed by the Alkali Lake Ranch in the early 1950s,<sup>154</sup> the meadow ceased to exist and its value as hayland was lost.

---

<sup>150</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, p. 93, M. Belleau).

<sup>151</sup> ICC Transcript, July 5, 2006 (ICC Exhibit 5a, p. 277, I. Johnson).

<sup>152</sup> ICC Transcript, July 5, 2006 (ICC Exhibit 5a, pp. 292–93, I. Johnson).

<sup>153</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, pp. 21–22, J. Roper).

<sup>154</sup> ICC Transcript, April 5 and 6, 2006 (ICC Exhibit 5a, pp. 57, 61, J. Johnson).

**APPENDIX B  
CHRONOLOGY**

**ESKETEMC FIRST NATION: WRIGHT'S MEADOW PRE-EMPTION INQUIRY**

- 1 Planning conference Vancouver, April 12, 2005
- 2 Community session Alkali Lake, April 5–6, 2006, and July 5, 2006

The Commission heard from Elders Jake Roper, Jim Johnson, Andy Chelsea, Rose Dick, Juliana Johnson, C.Y. Wycotte, Marilyn Belleau, Morris Chelsea, Victor Johnson, Augustine Wycotte, Willard Dick, Dorothy Johnson, Laura Harry, Bill Chelsea, and Irvine Johnson.

The Commission also heard evidence from Beth Bedard, a researcher for the Esketemc First Nation.

- 3 Written legal submissions
  - Submission on Behalf of the Esketemc First Nation, March 2, 2007
  - Submission on Behalf the Government of Canada, April 20, 2007
  - Reply on Behalf of the Esketemc First Nation, April 30, 2007
- 4 Oral legal submissions Williams Lake, May 9, 2007
- 5 Content of formal record

The formal record of the Esketemc First Nation Wright's Meadow Pre-emption Inquiry consists of the following materials:

- Exhibits 1–10 tendered during the inquiry
- transcripts of community session (1 volume) (Exhibit 5a)
- transcript of oral session (1 volume)

The report of the Commission and letter of transmittal to the parties will complete the formal record of this inquiry.